TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946

No. 850

HARRISON WILLIAMS, CLIFFORD F. STONE, SIDNEY J. WEINBERG, ET AL., PETITIONERS,

vs.

CARL J. AUSTRIAN AND ROBERT G. BUTCHER, AS TRUSTEES OF CENTRAL STATES ELECTRIC CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 4, 1947.

CERTIORARI GRANTED FEBRUARY 10, 1947.

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[fol. 1]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

CARL J. AUSTRIAN and ROBERT G. BUTCHER, as Trustees of Central States Electric Corporation, Plaintiffs-Appellants,

against

HARRISON WILLIAMS, CLIFFORD F. STONE, SIDNEY J. WEINBERG, Waddill Catchings, John Foster Dulles, Walter E. Sachs, Henry S. Bowers, Clinton M. Fluney, James F. Fogarty, Herbert C. Freeman, John B. Niven, Henry E. Mendes, Francis J. Clowes, Victor H. Stempf, Edwin H. Wagner, Sr., Robert C. Brown, William C. Bechert, Jacob P. Friedman, Albert E. Pardee, Ralph Jonas, Louis E. Kilmarx, Christian A. Johnson, David G. McCornack, John H. Eccles, Clarence F. Dillon, Otto A. Philipp and Hugh B. Baker, Defendants-Appellees

STATEMENT UNDER RULE 13

This suit was commenced on the 5th day of July 1945, by the filing of a complaint and the issuance of a summons by the clerk of the District Court.

The following, named as defendants in the complaint, have not been served with process: Arthur Sachs, Frank L. Taylor, Constantine A. H. Narlian, Charles Ward Schroeder, Reuben E. Glass, Walter C. Ross, George Touche, Andrew W. Tait, Charles R. Whitworth, Harold A. Anderson, Robert Sealy and North American Securities Corporation.

As to the following persons and corporations named as defendant in the complaint return of process has been vacated and the complaint dismissed: R. Gilman Smith, [fol. 2] Howard J. Sachs, New Empire Corporation, Electric Investment Corporation, Federal Utilities, Inc., Utilities Securities Corporation and Onandaga Corporation.

On October 1 and October 5, 1945 motions were made to dismiss the complaint for lack of subject matter jurisdiction. On May 20, 1946 an order granting the motions was

entered. On May 22nd, 1946, a final judgment and decree was made and entered dismissing the complaint for want of jurisdiction of the subject matter. The notice of appeal was filed on the 19th day of June 1946.

Plaintiffs appear by Austrian & Lance.

Defendants Harrison Williams, Clifford F. Stone, Clinton M. Finney and Albert E. Pardee, appear by Sullivan & Cromwell and Milton Pollack.

Defendants Walter E. Sachs, Henry S. Bowers, Sidney J. Weinberg, John Foster Dulles and Waddill Catchings, appear by Sullivan & Cromwell.

Defendants James F. Fogarty and Herbert C. Freeman appear by LeBoeuf & Lamb.

Defendants John B. Niven, Henry E. Mendes, Francis J. Clowes, Victor H. Stempf, Edwin H. Wagner, Sr., Robert C. Brown, William C. Bechert and Jacob P. Friedman, appear by Hawkins, Delafield & Longfellow.

Defendant Clarence F. Dillon appears by Cahill, Gordon, Zachry & Reindel. Defendant Dillon did not join in the motions made against the complaint.

Defendants Ralph Jonas, Louis E. Kilmarx, Christian A. Johnson, David A. McCornack, John H. Eccles, Otto A. Philipp and Hugh B. Baker appeared in person, did not join in the motions made, and were not in default at the time of the entry of the judgment below.

Other than as described above, there has been no change of parties or attorneys since the commencement of this action.

[fol. 3] IN DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

CARL J. AUSTRIAN and ROBERT G. BUTCHER, as Trustees of Central States Electric Corporation, Plaintiffs,

against

HARRISON WILLIAMS, CLIFFORD F. STONE, SIDNEY J. WEINBERG, Waddill Catchings, John Foster Dulles, Arthur Sachs, Walter E. Sachs, Howard J. Sachs, Henry S. Bowers, Ralph Jonas, Frank L. Taylor, Clinton M. Finney, James F. Fogarty, Herbert C. Freeman, Louis E. Kilmarx, Constantine A. H. Narlian, Charles Ward Schroeder, Reuben E. Glass, Walter C. Ross, George Touche, John B. Niven, Andrew W. Tait, Charles R. Whitworth, Henry E. Mendes, Francis J. Clowes, Victor H. Stempf, Edwin H. Wagner, Sr., Robert C. Brown, William C. Bechert, Jacob P. Friedman, Christian A. Johnson, David G. McCornack, R. Gilman Smith, John H. Eccles, Harold A. Andersen, Clarence F. Dillon, Robert Sealy, Otto A. Philipp, Albert E. Pardee, Hugh B. Baker, North American Securities Corporation, New Empire Corporation, Electric Investment Corporation, Federal Utilities Inc., Utilities Securities Corporation and Onondaga Corporation, Defendants

AMENDED COMPLAINT

Plaintiffs, Carl J. Austrian and Robert G. Butcher, as Trustees of Central States Electric Corporation, by their attorneys Austrian & Lance, file this bill of complaint against the defendants above-named and thereupon plaintiffs state and allege that:

A-1. Central States Electric Corporation, (hereinafter referred to as the "Debtor"), was and still is a corporation [fol. 4] organized and existing under the laws of the State of Virginia, and, until and after the filing of the petition for reorganization, as hereinafter more particularly set forth, had its principal office in the City of Richmond, State of Virginia, and maintained an office for the transaction of business in the Borough of Manhattan, City, County and State of New York.

A-2. On February 23, 1942, said Debtor filed its petition for reorganization under and pursuant to the provisions of

Chapter X of the Act of Congress relating to Bankruptcy, in the District Court (hereinafter referred to as the "District Court") of the United States for the Eastern District of Virginia.

A-3. On the 27th day of February, 1942, the District Court, by order duly made and entered the same day, approved said petition.

A-4. Thereafter and on the 15th day of November, 1944, Carl J. Austrian, and on the 20th day of March, 1945, Robert G. Butcher, were duly appointed the Trustees of the said Debtor and were expressly vested by the said District Court in the respective orders of appointment with all the additional rights and powers which Receivers in Equity would have if appointed by a Court of the United States for the property of the Debtor.

A-5. Plaintiffs have duly qualified as Trustees of the Debtor by entering into bonds with the United States, as required by law.

A-6. At all the dates and times subsequent to the dates mentioned in paragraph "A-4" hereinabove, plaintiffs have been and still are acting as the duly appointed and qualified Trustees of said Debtor.

[fol. 5] A-7. Upon the appointment and qualifications of plaintiffs as Trustees, as aforesaid, they became and still are vested for the benefit of said Debtor, the creditors and stockholders thereof, in accordance with the provisions of the laws of the United States in such cases made and provided with all and singular the property, estate, assets and causes of action which were owned by said Debtor or to which said Debtor or its creditors were in any wise entitled on the day when said petition for reorganization was filed, as aforesaid.

A-8. Heretofore and by order made and entered by the District Court, plaintiffs were granted leave, permission and authority to institute and prosecute this suit.

A-9. Plaintiffs invoke the jurisdiction of this Court and bring this action under the authority of the Constitution of the United States, (Article I, Section 8, Clause 4, and Article III, Section 2), the Act of Congress relating to Bankruptcies (U. S. Code, Title 11), and pursuant to the

provisions of Section 24 (1), (19) of the Judicial Code [U. S. Code, Title 28, Section 41 (1), (19)].

A-10. The amount in controversy exceeds, exclusive of interest and costs, the sum of $3,000.

A-11. At all of the times hereinafter mentioned, the sole and only voting rights of the stockholders of the Debtor were vested exclusively in its 7% preferred stock and in its common stock, each share of the above-described preferred and common stock of the Debtor having one vote.

A-12. Each of the defendants enumerated in Schedules "A", "B" and "C" occupied the positions of trust and responsibility in and with respect to the Debtor during the times and periods set opposite his name upon said Sched- [fol. 6] ules. Whenever reference will be made throughout this complaint to any of the defendants enumerated in Schedules "A", "B" and "C" and in paragraphs "A-13", "A-14", "A-15", "B-2" and "B-8" of this complaint, such reference will be to his surname.

A-13. During the year 1929 and subsequent to the organization of Shenandoah Corporation, more particularly described in paragraph "A-26" of this complaint, the following-named defendants occupied the following offices and positions of trust and responsibility in and with respect to said Shenandoah Corporation, to wit:

Harrison Williams	—Director
Clifford F. Stone	—Director and President
Sidney J. Weinberg	—Director
Waddill Catchings	—Director
John Foster Dulles	—Director

A-14. On and after the 3rd day of July, 1929, and during the remainder of the year 1929, the following-named defendants occupied the following positions of trust and responsibility in and with respect to Goldman Sachs Trading Corporation, a corporation organized under and pursuant to the laws of the State of Delaware, to wit:

Waddill Catchings	—Director and President
Sidney J. Weinberg	—Director
Arthur Sachs	—Director
Walter E. Sachs	—Director
Howard J. Sachs	—Director

Henry S. Bowers —Director
Ralph Jonas —Director
Frank L. Taylor – Director

A-15. On and subsequent to the third day of July, 1929, and at all the times mentioned herein subsequent thereto during the year 1929, defendants Waddill Catchings, Sidney J. Weinberg, Arthur Sachs, Walter E. Sachs, Howard [fol. 7] J. Sachs and Henry S. Bowers were copartners doing business in the City and State of New York, under the firm name and style of Goldman Sachs & Co., (hereinafter referred to as "Goldman Sachs & Co.").

Upon Information and Belief

A-16. At all of the times hereinafter mentioned and subsequent to the year 1912, Williams owned and controlled in his own name, or in the name or names of a nominee or nominees, or in the name or names of a corporation or corporations all the stock of which corporation or corporations was owned either directly or indirectly by said Williams, the shares of the common stock of the Debtor in the number and percentages of the total issued and outstanding common stock of the Debtor, as set forth in the following schedule, to wit:

COMMON STOCK

Date	No. of Shares Outstanding	Owned and Controlled by Harrison Williams	%
Dec. 31, 1912	44,816	12,341	27.5
" " 1913	54,519	17,622	32.3
" " 1914	54,519	11,138	20.4
" " 1921	54,519	13,976	25.6
" " 1922	54,519	34,833	63.9
" " 1923	54,519	43,166	79.2
" " 1924	109,038	104,671	96.0
" " 1926	1,090,380	1,053,435	96.0
" " 1927	1,090,380	1,055,985	96.0
" " 1928	1,177,503	1,142,810	97.1
" 6, 1929	8,723,368	5,388,427	61.8
" 31, 1930	9,623,860	5,119,990	53.2
" " 1931	10,125,422	5,182,133	51.2
" " 1936	10,114,148	5,123,961	50.6
June 30, 1941	10,105,023	5,115,861	50.6

The number of shares owned and controlled by Williams on February 23, 1942, did not vary in any substantial degree from the number of shares owned and controlled by him on June 30, 1941. The number of shares owned and [fol. 8] controlled by Williams did not vary in any substantial degree between the respective dates set forth above other than the variance disclosed in the above schedule.

A-17. At all of the times hereinafter mentioned and subsequent to the year 1912, Williams owned and controlled in his own name, or in the name or names of a nominee or nominees, or in the name or names of a corporation or corporations all the stock of which corporation or corporations was owned either directly or indirectly by said Williams the shares of the 7% preferred stock of the Debtor in the number and percentage of the total issued and outstanding 7% preferred stock of the Debtor as set forth in the following schedule, to wit:

Date	Shares Outstanding	Owned by Williams	%
December 31, 1912	37,347	647	1.7
" " 1913	45,433	6465	14.2
" " 1914	45,433	6429	14.2
" " 1921	45,433	7349	16.1
" " 1922	45,433	6164	13.6
" " 1923	45,433	6349	14.0
" " 1924	45,433	0	0

The number of shares owned and controlled by Williams did not vary in any substantial degree between the respective dates set forth above other than the variance disclosed in the above schedule.

A-18. By reason of said ownership and control of the common stock of the Debtor, as more particularly alleged in paragraph "A-16" of this complaint, Williams completely dominated and controlled the assets, business, policies and affairs of the Debtor, and by reason of said domination and control, caused to be elected as directors and as officers of the Debtor only such persons as would be subservient to his will and would carry out his wishes with respect to the [fol. 9] Debtor's assets, policies, business and affairs.

A. 19. By reason of the foregoing facts Williams was subject to and in fact assumed all of the duties, liabilities and responsibilities of a fiduciary of and for the Debtor.

A-20. Beginning as early as the year 1922 Williams conceived of a plan and conspiracy the single and entire purpose of which was to use his fiduciary position as the dominant and managing stockholder of the Debtor for his own personal profit and for his own personal and selfish purposes to draw large amounts in cash from the Debtor by way of dividends, to make and enjoy secret profits, to acquire interests and assets to the detriment of the Debtor and in complete disregard of the interests and welfare of said Debtor and Williams' fiduciary duties to the Debtor. In the course of the execution of said plan, Williams:

(a) Acted at and throughout the dates and periods mentioned hereinafter as the self assumed agent of the Debtor although he was neither an officer nor a director of the Debtor;

(b) At and during said dates and periods and entirely in his own interest acted as the manager of the Debtor, dictated its policies and controlled its affairs in complete disregard of the corporate personality of the Debtor;

(c) Arranged to achieve all the purposes herein set forth by depriving the Debtor of any independent will of its own and of any voice in its own affairs by means of a management contract whereby, through New Empire Corporation one of his wholly owned corporate creatures, he supplied the Debtor with officers, directors [fol. 10] and employees whose sole fealty and loyalty was in fact to him and not to the Debtor;

(d) Through this management contract he took possession of the Debtor's assets and affairs and engaged in a continuing conspiracy with persons hereinafter named to loot, defraud, overreach and mismanage the Debtor;

(e) In the course of this plan and conspiracy, he engaged in many specific transactions and ventures, all corrupt and deviously concealed from the Debtor's rightful owners, creditors and stockholders, and to that end, and in the course thereof, he:

I. Appropriated to himself for his own personal profit contracts, opportunities and assets belonging to the Debtor;

II. Used the funds of the Debtor for his own individual benefit and caused the Debtor to assume ventures and investments made by him individually which had become onerous and burdensome to him;

III. Overreached the Debtor and made unconscionable and unreasonable profits at its expense;

IV. Disregarded the corporate existence of the Debtor and at numerous times and occasions so acted that he was in fact dealing with himself, while trying to maintain an outward appearance that the Debtor was an independent entity with a will of its own;

V. Used the funds of the Debtor to engage in ventures solely and entirely in his individual and personal interest and resulting in great losses to the Debtor;

[fol. 11] VI. In his capacity as fiduciary, manager and dominant stockholder, caused the Debtor to embark on a course of conduct designed to destroy assets of the Debtor and to enable him to evade and avoid his just obligations to the Debtor;

VII. Concealed the existence of his wrongdoings until the same were discovered after the filing of the petition for reorganization, as above set forth.

(f) All of the transactions hereinafter set forth were simply steps in the effectuation by Williams of his continued and continuing plan and conspiracy to loot, defraud and overreach the Debtor, the particulars of which are hereinafter set forth.

A-20-A. Williams and the other defendants named in this action knowingly, deliberately, intentionally and fraudulently concealed and kept concealed from the Debtor and plaintiffs as Trustees all of the facts with respect to the transactions described in this complaint. Neither the Debtor nor plaintiffs as Trustees obtained or had any knowledge or information of the said matters, frauds and wrongdoings, or any of them, alleged and set forth herein, until after the completion of an investigation of the acts, conduct, property, liabilities and financial condition of the Debtor directed to be made by order of the District Court, dated November 15, 1944, pursuant to the provisions of Section 167 of the Bankruptcy Act. Said investigation was commenced after November 15, 1944. Thereafter, and subse-

quent to November 15, 1944 and within two years of the commencement of this action, the said frauds, wrongs and transactions complained of herein were for the first time discovered by plaintiffs as Trustees and came to their attention and knowledge.

[fol. 12] A-21. During all the times hereinafter mentioned, Williams owned directly or indirectly all the capital stock of defendants North American Securities Corporation (hereinafter referred to as "Nasco"), New Empire Corporation (hereinafter referred to as "New Empire"), Onondaga Corporation (hereinafter referred to as "Onondaga"), Federal Utilities Inc., Utilities Securities Corporation and Electric Investment Corporation.

A-22. Beginning with the month of March, 1929, and thereafter during 1929, Nasco was indebted to the Debtor in the amounts and on the dates set forth in the following schedule, to wit:—

Date	Amount
March 31	$ 355,000
April 30	1,465,000
May 31	1,512,000
June 30	2,222,000
July 31	2,837,000
August 31	3,487,000
September 30	5,492,000
October 31	10,477,000
November 30	7,322,100.52
December 31	492,100.52

A-23. In and around the month of July, 1929, Debtor was in great need of ready cash as evidenced by the following:

(a) The Debtor was indebted to banks during the dates and in the amounts specified in the following schedule, to wit:—

Date	Amount
June 30	$ 1,500,000
July 31	9,750,000
August 31	14,000,000
September 30	14,000,000
October 31	14,000,000
November 30	14,000,000
December 31	8,000,000

[fol. 13] (b) On or about the 11th day of June, 1929, the Debtor sold 115,500 shares of its own preferred stock, 6% optional dividend series of 1929, for $11,241,000;

(c) During the month of July, 1929, there were outstanding as obligations of the Debtor in excess of $19,000,000 of 5% debenture bonds, issued in 1928;

(d) On September 15, 1929, Debtor issued additional debentures in the face amount of $25,000,000.

A-24. At all of the times hereinafter mentioned Goldman Sachs & Co. controlled and dominated Goldman Sachs Trading Corporation in that the six partners of Goldman Sachs & Co. were directors of Goldman Sachs Trading Corporation and constituted 75% of the board of directors of Goldman Sachs Trading Corporation.

A-25. In or about the month of July, 1929, Williams and Catchings conceived the idea of forming a corporation for the purpose of owning common stocks in various and sundry public utility and industrial corporations.

A-26. Accordingly and during the month of July, 1929, Williams acting for and on behalf of the Debtor, and Catchings acting for and on behalf of Goldman Sachs Trading Corporation, caused to be organized Shenandoah Corporation (hereinafter referred to as "Shenandoah") under and pursuant to the laws of the State of Delaware.

A-27. Williams acted as the agent of the Debtor in connection with the organization of Shenandoah.

A-28. Goldman Sachs & Co. acted as the bankers in connection with the organization of Shenandoah.

[fol. 14] A-29. The Debtor and Goldman Sachs Trading Corporation acted as the joint sponsors in connection with the organization of Shenandoah.

A-30. After Shenandoah was organized, Williams as agent for the Debtor, and Catchings as agent for the bankers, Goldman Sachs & Co., and Goldman Sachs Trading Corporation, orally agreed that the Debtor would sell to Shenandoah 480,770 shares of the Debtor's own common stock at a price then and there determined and agreed upon

by and between Williams and Catchings to be in the amount of $52. per share.

A-31. No one but Williams participated in these negotiations with Catchings on behalf of or as agent for the Debtor.

A-32. On the day Williams and Catchings made their oral agreement, as set forth in paragraph "A-30" of this complaint, on the 24th day of July, 1929, during the entire period of the organization and financing of Shenandoah and at the time of the performance of said agreement, the Debtor pursuant to the laws of the State of Virginia and in accordance with the terms and provisions of the Debtor's charter, had an authorized common stock of 10,000,000 shares in number, all without par value, of which 8,283,660.39 shares were issued and outstanding.

A-33. At the time this oral agreement and arrangement as set forth in paragraph "A-30" of this complaint was made between Williams and Catchings the Debtor had the complete authority, right and power under and pursuant to the laws of the State of Virginia and under and pursuant to its own charter to sell, deliver and transfer to Shenandoah as originally issued 480,770 shares of its own common stock at a price of $52. per share.

[fol. 15] A-34. At the time that they participated in the organization of Shenandoah and in the formation of the oral agreement above described in paragraph "A-30" of this complaint, Williams and Catchings knew that the Debtor was fully able to sell and deliver to Shenandoah the Debtor's own common stock as originally issued shares to the extent of 480,770 shares.

A-35. At the time that they participated in the organization of Shenandoah and in the formation of the oral agreement above described in paragraph "A-30" of this complaint Williams and Catchings knew or should have known that the Debtor owned as treasury stock only 536.5 shares of its own common stock.

A-36. Then and there and prior to the execution of the written agreement more particularly set forth and described in paragraph "A-38" of this complaint, Williams determined that he would prevent the Debtor from selling to Shenandoah the entire block of 480,770 shares of its own common stock and that for his own individual use and

benefit he would deprive the Debtor of the full benefit of the said contract more particularly described hereinafter in paragraph "A-38" of this complaint, to the extent of 20% thereof, namely 96,154 shares.

A-37. At the time Williams came to this decision he alone was acting as the Debtor's agent in connection with the making of the agreement for the financing of Shenandoah and he alone was acting as the Debtor's agent in connection with and with respect to the sale to Shenandoah of 480,770 shares of the Debtor's own common stock; accordingly, and by reason of these facts, Williams was a fiduciary of and for the Debtor in connection with the said contract of sale.

[fol. 16] A-38. Thereafter and on the 23rd day of July, 1929, the oral agreement made by and between Williams and Catchings with respect to the financing of Shenandoah and the sale to Shenandoah by the Debtor of 480,770 shares of the Debtor's own common stock was reduced to a written contract to which the Debtor, Goldman Sachs Trading Corporation, Shenandoah and Goldman Sachs & Co. were parties. A copy of this agreement is annexed hereto marked Exhibit "A(1)" and made a part hereof.

A-39. Pursuant to that agreement, Exhibit "A(1)" annexed hereto, Debtor agreed to sell and Shenandoah agreed to buy 480,770 shares of the Debtor's common stock at a price computed and agreed to be $52: per share.

A-40. Williams was familiar with and was fully cognizant of the rights of the Debtor as embodied in said contract with Shenandoah, Exhibit "A(1)" annexed hereto.

A-41. By reason of the facts set forth hereinabove it was the duty of Williams to further the interests of the Debtor and to refrain from interfering with its contract right to sell 480,770 shares of its own common stock to Shenandoah.

A-42. At a time when the Debtor was entitled by contract to $5,000,000 on the delivery by it of 96,154 shares of its own common stock to Shenandoah pursuant to the agreement, Exhibit "A(1)" annexed hereto, which contract the Debtor was fully able to perform, Williams, the Debtor's dominant and managing stockholder and fiduciary, caused the Debtor against its own interest to purchase 96,154 shares of its own already issued common stock from

Nasco for delivery to Shenandoah pursuant to the above mentioned contract, Exhibit "A(1)" annexed hereto. Said conduct and action by Williams was corrupt, fraudulent and illegal and resulted in a loss to the Debtor of $5,000,000.

[fol. 17] A-43. Despite Williams' duty as a fiduciary of the Debtor not to impair the interest of the Debtor arising out of the said contract Exhibit "A(1)" annexed hereto, and the Debtor's right to sell 480,770 shares of its own unissued common stock to Shenandoah for $52. per share, and in violation of his fiduciary obligations, Williams, Fogarty, Freeman, Kilmarx, Narlian, Schroeder, Stone, Glass and Ross, conspired together and agreed and formed the deliberate design and purpose to misappropriate the benefits of said contract to the extent of 96,154 shares amounting in price to the sum of $5,000,000, to the gain and advantage of Williams.

A-44. The diver's acts and things done by Williams, Fogarty, Freeman, Kilmarx, Narlian, Schroeder, Stone, Glass and Ross, as hereinabove alleged and as more particularly set forth hereinafter, were all steps in this design and conspiracy in which all of the persons named in this paragraph participated, and which were all done for the common purpose of depriving Debtor of the benefits of said contract with Shenandoah, Exhibit "A(1)" annexed hereto, and to enable Williams to sell the already issued shares of the Debtor's common stock owned by Nasco rather than to permit Debtor to sell its own unissued shares as was its right under and pursuant to the above mentioned contract with Shenandoah, Exhibit "A(1)" annexed hereto.

A-45. Debtor would have been able to realize the sum of $5,000,000 from the sale of 96,154 shares of its own unissued common stock to Shenandoah, included within the 480,770 shares specified in the contract Exhibit "A(1)" annexed hereto, but for the fraudulent acts of Williams in overreaching the Debtor, in abusing the trust and confidence of the Debtor, in taking advantage of the Debtor, and in causing the 96,154 shares of the Debtor's outstanding com-
[fol. 18] mon stock owned by Nasco to be sold to said Shenandoah in the place and stead of the Debtor's own unissued common stock, pursuant to the plan, scheme and conspiracy more particularly elaborated and set forth herein.

A-46. Debtor could and would have performed the contract made by it as aforesaid with Shenandoah, Exhibit "A(1)" annexed hereto, and the obligations on its part to be performed according to the terms of said contract to the Debtor's great gain and profit, but for the violations of fiduciary obligations, duties and trusts and the wrongful acts and conduct of Williams, Fogarty, Freeman, Kilmarx, Narlian, Schroeder, Stone, Glass and Ross, as hereinabove and hereinafter set forth.

A-47. Williams, Fogarty, Freeman, Kilmarx, Narlian, Schroeder, Stone, Glass and Ross, well knowing the facts and transactions hereinbefore set forth, and the rights and obligations of the Debtor and the parties in and to the premises, planned and determined that in violation of their fiduciary obligations, duties and trusts as fiduciaries, directors, officers and agents of the Debtor, and in violation of the rights of the Debtor, its then existing and subsequently created stockholders, debenture holders and creditors, they would so proceed as to enable Williams wrongfully to appropriate to Williams' own use and benefit and to enable Williams to take, receive, acquire and retain for himself and for his own benefit said contract made as aforesaid by Debtor with Shenandoah, Exhibit "A(1)" annexed hereto, to the extent of 96,154 shares of its own unissued common stock and any and all rights and benefits accruing or which might accrue to Debtor under said contract of sale, and to appropriate and retain to Williams through Nasco, his wholly owned corporate instrumentality, the benefits of [fol. 19] said contract of sale and to exclude the Debtor therefrom without any consideration therefor; and the persons above named in this paragraph, in violation of their fiduciary obligations, duties and trusts then and there secretly entered into a corrupt and unlawful agreement and conspiracy with each other to do and cause to be done the aforesaid unlawful acts and things and to accomplish and cause to be accomplished the aforesaid corrupt, fraudulent and illegal objects and purposes, and Catchings, Weinberg, Arthur Sachs, Walter E. Sachs, Howard J. Sachs, Bowers, Jonas, Taylor and Dulles became parties to and acted in said plan, agreement and conspiracy, as in this complaint set forth, and the acts and things herein complained of were done by the persons named in this paragraph in aid and

in execution of said plan, agreement and conspiracy and said corrupt, fraudulent and illegal objects and purposes.

A-48. In order to induce Catchings, Weinberg, Arthur Sachs, Walter E. Sachs, Howard J. Sachs, Bowers, Jonas and Taylor to assist him in the fraudulent, corrupt and illegal conspiracy hereinabove and hereinafter set forth, Williams promised and agreed with said persons above named in this paragraph to cause the Debtor:

(a) To purchase 30,000 shares of the common stock of Goldman Sachs Trading Corporation from Goldman Sachs Trading Corporation at a price of approximately $3,300,000;

(b) To permit Goldman Sachs & Co. to act as the bankers in and with respect to the organization and financing of Shenandoah, and thus enable Goldman Sachs & Co. to receive $1,500,000 as underwriting and bankers' commissions, and Catchings, Weinberg, Arthur Sachs, Walter E. Sachs, Howard J. Sachs, Bowers, Jonas and Taylor, promised and agreed with Williams that if the foregoing matters were accom- [fol. 20] plished they would aid and abet Williams in his fraudulent, corrupt and illegal conspiracy, and would interpose no objections to his causing Nasco to sell 96,154 shares of the already issued common stock of the Debtor to Shenandoah in the place and stead of the Debtor selling its own unissued common stock to the extent of 96,154 shares, and Catchings, Weinberg, Arthur Sachs, Walter E. Sachs, Howard J. Sachs, Bowers, Jonas and Taylor, did in fact aid, abet and assist Williams in the formation and execution of said corrupt, fraudulent and illegal plan, agreement and conspiracy, and said Williams did in fact cause Debtor to purchase 30,000 shares of the common stock of Goldman Sachs Trading Corporation from Goldman Sachs Trading Corporation at a price of approximately $3,300,000, and did in fact permit Goldman Sachs & Co. to act as the bankers in the organization and financing of Shenandoah, for which said Goldman Sachs & Co. received as bankers' and underwriting commissions the said sum of $1,500,000.

A-49. Pursuant to said plan and corrupt, fraudulent, and illegal agreement and conspiracy, Williams did in fact

fraudulently and illegally procure Fogarty, Freeman, Kilmarx, Narlian, Schroeder, Stone and Ross, in violation of their duties, trusts and obligations to the Debtor, to agree on behalf of the Debtor with Nasco, to pay to Nasco the sum of $5,000,000 in consideration of the delivery by Nasco to Shenandoah of 96,154 shares of the already issued common stock of the Debtor, and to exclude the Debtor from its contract right as fixed in Exhibit "A(1)" annexed hereto to sell and deliver its own unissued common stock to Shenandoah to the extent of 96,154 shares for the sum of $5,000,000, and the persons named in this paragraph did in fact corruptly, fraudulently and illegally appropriate [fol. 21] the benefits of said contract between Debtor and Shenandoah, Exhibit "A(1)" annexed hereto, to the use of Williams and for Williams' sole benefiit through Nasco, the corporate creature of Williams, and did in fact permit Williams to take as his own and to receive for his own individual benefit the fruits of said contract, Exhibit "A(1)" annexed hereto.

A-50. The Debtor received no valuable consideration nor anything of value whatsoever and none of the persons named as participating in this transaction paid to the Debtor any consideration at all for said appropriation by Williams of the Debtor's said property and contract right to sell and deliver 96,154 shares of its own unissued common stock to Shenandoah for the sum of $5,000,000 as provided in the agreement Exhibit "A(1)" annexed hereto.

A-51. Catchings, Weinberg, Arthur Sachs, Walter E. Sachs, Howard J. Sachs, Bowers, Jonas, Taylor and Dulles co-operated with Williams herein and assisted him in the execution as aforesaid and as hereinafter set forth of his said plan and corrupt, fraudulent and unlawful agreement and conspiracy and became parties thereto and to the carrying out thereof in violation of their duties and obligations to the Debtor, and in complete subservience to the wishes and decisions of Williams, and the persons above named in this paragraph acted as aforesaid with full and complete knowledge of or being on notice of and upon inquiry as to all the facts herein set forth, the rights and obligations of the parties in and to the premises and the wrongful character of the transactions to which they were parties.

A-52. Pursuant to and in execution of said plan and corrupt, fraudulent and illegal agreement and conspiracy and for the accomplishment thereof Fogarty, Freeman, [fol. 22] Kilmarx, Narlian, Schroeder, Stone, Glass, Ross and Williams, did and caused to be done and assisted in the doing of the acts and things hereinbefore and hereinafter complained of including, among others, the following, to wit:

(a) On or about the 24th day of July, 1929, they caused the Debtor to make an agreement with Nasco to pay to Nasco the sum of $5,000,000 for delivery to Shenandoah of 96,154 shares of the already issued and outstanding common stock of the Debtor; a copy of said agreement is annexed hereto and marked Exhibit "A(2)" and made a part hereof;

(b) On the 24th day of July, 1929, at a meeting of the board of directors of the Debtor, at which were present the following directors, to wit: Fogarty, Freeman, Kilmarx, Narlian, Schroeder, Stone, and the following officer, namely, Ross, they caused proceedings to be taken whereby the said contract with Nasco was ratified and approved;

(c) Thereafter and pursuant to said fraudulent, corrupt and illegal agreement, and on the 5th day of August, 1929, Nasco did deliver 96,154 shares of the already issued common stock of the Debtor to Shenandoah and was paid therefor the sum of $5,000,000 by the Debtor on the 7th day of August, 1929;

(d) They refrained and caused the Debtor to refrain from delivering 96,154 shares of its own unissued common stock to Shenandoah and receiving $5,000,000 therefor, as the Debtor had the right under and pursuant to said contract with Shenandoah, Exhibit "A(1)" annexed hereto;

[fol. 23] (e) They refrained and caused the Debtor to refrain from making appropriate and authorized use of the Debtor's unissued common stock then and there existing and available for delivery to Shenandoah under the said contract with Shenandoah, Exhibit "A(1)" annexed hereto;

(f) They made no effort whatsoever and caused the Debtor to refrain from making any effort whatsoever

to fulfill the terms of said contract with Shenandoah by delivering to Shenandoah 96,154 shares of Debtor's own unissued common stock for the sole benefit of the Debtor;

(g) They used their positions of trust and responsibility and the powers vested in them by the Debtor to prevent the Debtor from making any delivery of its own unissued, authorized common stock to Shenandoah to the extent of 96,154 shares;

(h) They misused the powers entrusted to them by the Debtor and made corrupt, fraudulent and illegal use of their said powers for the purpose of corruptly enriching Williams, all in violation of their fiduciary duties, obligations and trusts as officers, directors and fiduciaries of and for the Debtor;

(i) They used their positions of trust and responsibility and the powers vested in them by the Debtor for Williams' own profit and to deprive the Debtor of property and contract rights lawfully belonging to the Debtor and to deprive the Debtor of profits to which the Debtor alone was lawfully entitled by causing Nasco to make the delivery to Shenandoah of 96,154 shares of the already issued and outstanding common stock of the Debtor owned by Nasco for $5,000,000 in the [fol. 24] place and stead of the Debtor delivering 96,154 shares of its own unissued common stock pursuant to said contract with Shenandoah for $5,000,000;

(j) From the 20th day of July, 1929, to the 7th day of August, 1929, they caused the Debtor to purchase from Goldman Sachs Trading Corporation 30,000 shares of the common stock of the Goldman Sachs Trading Corporation for approximately $3,360,000;

(k) They permitted Goldman Sachs & Co. to act as the bankers for Shenandoah in connection with the financing and organization of Shenandoah to the profit of Goldman Sachs & Co., of $1,500,000.

A-53. Pursuant to and in execution of said corrupt, fraudulent and illegal plan, agreement and conspiracy and for the accomplishment thereof, Catchings, Weinberg, Arthur Sachs, Walter E. Sachs, Howard J. Sachs, Bowers,

Jonas and Taylor, with full knowledge that Williams was acting in his own personal interest and not for the benefit of the Debtor, assisted Williams in the doing of all the acts and things hereinbefore and hereinafter complained of including among others the following, to wit:

(a) On the 23rd day of July, 1929, they caused Goldman Sachs Trading Corporation to execute the agreement, Exhibit "A(1)" annexed hereto, with the intent and for the purpose of permitting Williams to obtain 20% of the benefit of said contract by selling for his own individual benefit 96,154 shares of the already issued and outstanding common stock of the Debtor to Shenandoah for $5,000,000 in place and stead of the Debtor selling the same number of shares of its own unissued common stock for $5,000,000;

[fol. 25] (b) They made no effort to interfere with Williams' corrupt, fraudulent and illegal plan and conspiracy to deprive the Debtor of the full benefit of said contract with Shenandoah, Exhibit "A(1)" annexed hereto;

(c) They actively assisted Williams in selling through his corporate creature Nasco for his own individual benefit 96,154 shares of the already issued and outstanding common stock of the Debtor to Shenandoah for $5,000,000 in the place and stead of the Debtor selling its own unissued common stock to Shenandoah in the same number for $5,000,000, pursuant to the terms and provisions of the agreement with Shenandoah, Exhibit "A(1)" annexed hereto.

A-54. Pursuant to and in execution of said corrupt, fraudulent and illegal plan, agreement and conspiracy and for the accomplishment thereof, Catchings, Weinberg, Stone, Williams and Dulles, with full knowledge that Williams was acting in his own personal interest and not for the benefit of the Debtor, assisted Williams in the doing of the acts and things hereinbefore and hereinafter complained of including among others the following, to wit:

(a) On the 23rd day of July, 1929, they caused Shenandoah to execute the agreement Exhibit "A(1)" annexed hereto, with the intent and for the purpose of permitting Williams through his corporate creature,

Nasco, to obtain 20% of the benefit of said contract by selling for his own individual benefit 96,154 shares of the already issued and outstanding common stock of the Debtor to Shenandoah for $5,000,000 in place and stead of the Debtor's selling the same number of shares of its own unissued common stock for $5,000,000;

[fol. 26] (b) They caused Shenandoah to receive 96,154 shares of the already issued comon stock of the Debtor purportedly pursuant to the agreement, Exhibit "A(1)" annexed hereto, when in fact they knew or should have known or were put on inquiry of facts which should have caused them to believe and to know that said 96,154 shares were delivered to Shenandoah in the interests of and on behalf of Williams;

(c) They made no effort to interfere with Williams' corrupt, fraudulent and illegal plan and conspiracy to deprive the Debtor of the full benefit of said contract with Shenandoah, Exhibit "A(1)" annexed hereto;

(d) They refrained and caused Shenandoah to refrain from insisting that the entire 480,770 shares of the common stock of the Debtor to be delivered pursuant to the agreement, Exhibit "A(1)" annexed hereto, be of original issue contrary to their duties and obligations as directors of Shenandoah;

(e) They used their positions of trust and responsibility and the powers vested in them by Shenandoah for Williams' own profit and to deprive the Debtor of property and rights lawfully belonging to the Debtor and of benefits to which the Debtor alone was lawfully entitled by accepting from Williams 96,154 shares of the Debtor's already issued common stock for the sum of $5,000,000;

(f) Knowing that Williams was violating his fiduciary obligations to Debtor, they nevertheless participated in said violations and assisted Williams in carrying out his unlawful plan, corrupt agreement and conspiracy by permitting Williams through his corporate [fol. 27] creature Nasco to sell to Shenandoah his own stock of the Debtor to the extent of 96,154 shares;

(g) They knew that the purported sale to Shenandoah of said 96,154 shares by Williams through his

creature Nasco was a sham, a fraud and a device whereby Williams accomplished his corrupt plan and unlawful conspiracy to deprive the Debtor of the benefits of said agreement, Exhibit "A(1)" annexed hereto, to the extent of $5,000,000 thereof;

(h) They actively assisted Williams in selling through his creature Nasco for his own individual benefit 96,154 shares of the already issued and outstanding common stock of the Debtor to Shenandoah for $5,000,000 in the place and stead of the Debtor selling its own unissued common stock to Shenandoah in the same amount for $5,000,000 pursuant to the terms and provisions of this agreement with Shenandoah, Exhibit "A(1)" annexed hereto.

A-55. Pursuant to and in execution of said corrupt, fraudulent and illegal plan, agreement and conspiracy and for the accomplishment thereof, Catchings, Weinberg, Arthur Sachs, Walter E. Sachs, Howard J. Sachs and Bowers, as copartners doing business under the firm name and style of Goldman Sachs & Co., with full knowledge that Williams was acting in his own personal interest and not for the benefit of the Debtor, assisted Williams in the doing of the acts and things hereinbefore and hereinafter complained of including among others the following, to wit:

(a) On the 23rd day of July, 1929, said defendants doing business under the firm name and style of Goldman Sachs & Co. executed the agreement, Exhibit [fol. 28] "A(1)" annexed hereto, with the intent and for the purpose of permitting Williams to obtain 20% of the benefit of said contract by selling through his creature Nasco for his own individual benefit 96,154 shares of the already issued and outstanding common stock of the Debtor to Shenandoah for $5,000,000 in place and stead of the Debtor selling the same number of its own unissued common stock for $5,000,000;

(b) They made no effort to interfere with Williams' corrupt, fraudulent and illegal plan and and conspiracy to deprive the Debtor of the full benefit of said contract with Shenandoah, Exhibit "A(1)" annexed hereto;

(c) They actively assisted Williams in selling through his creature Nasco for his own individual

benefit 96,154 shares of the already issued and outstanding common stock of the Debtor to Shenandoah for $5,000,000 in the place and stead of Debtor selling its own unissued common stock to Shenandoah in the same number for $5,000,000 pursuant to the terms and provisions of this agreement with Shenandoah, Exhibit "A(1)" annexed hereto.

A-56. Williams took and received the said $5,000,000 obtained by Nasco for the delivery of the aforementioned 96,154 shares of the already issued common stock of the Debtor and held, and now holds the said $5,000,000 and all the profits derived therefrom in trust as the property of the Debtor herein and of plaintiffs as Trustees of said Debtor.

A-57. By reason of the premises each of the defendants named as participating in this transaction has become and is now liable to account to the Debtor and to plaintiffs as [fol. 29] Trustees thereof as aforesaid for the $5,000,000 received by Williams or Nasco for the delivery of 96,154 shares of the already issued common stock of the Debtor by Nasco to Shenandoah as aforesaid.

A-58. By reason of the foregoing Williams has made large and substantial profits, the exact amount of which are unknown to plaintiffs. Williams has invested and reinvested the said $5,000,000 and by reason thereof has made and earned additional large and substantial profits, the exact amounts of which are unknown to plaintiffs at the present time.

A-59. No part of the said $5,000,000 for which each of the persons named as participating in this transaction are accountable and liable as aforesaid has ever been paid or returned to said Debtor or to plaintiffs as Trustees thereof, in restitution or restoration or as compensation for the losses and damages caused to said Debtor or plaintiffs as its Trustees, by the corrupt, fraudulent and illegal acts aforesaid.

A-60. Plaintiffs are entitled to recover from Williams and Nasco the sum of $5,000,000 with appropriate interest, together with all profits derived therefrom by said Williams and Nasco, in restitution and restoration of the losses and damages caused to the Debtor by Williams' corrupt, fraudulent and illegal acts. Plaintiffs and the

Debtor hereby repudiate the contract between the Debtor and Nasco, Exhibit "A(2)" annexed hereto, as a sham, and plaintiffs and the Debtor stand ready to treat and consider Williams or his creature Nasco as the owner and holder of 96,154 shares of the Debtor's common stock, and to deliver and return to Williams or Nasco all the dividends and benefits accrued or accruing or incident to the ownership of the above described 96,154 shares of the Debtor's common [fol. 30] stock, from the 24th day of July 1929 up to and including the present date, including any and all rights accrued or accruing or pertaining to said shares, by reason of any reorganization plan or agreement to be made in the reorganization proceeding above described and mentioned in paragraph "A-2" hereof, subject to any adjustments, liens or accountings required to be made in equity and good conscience.

B-1. Another transaction wherein Williams violated his fiduciary obligations to the Debtor is shown by his dealings with respect to 68,423 shares of the common stock of North American Company which the Debtor had a contract right to sell to Blue Ridge Corporation, now to be related by plaintiffs.

B-2. George Touche, John B. Niven, Andrew W. Tait, Charles R. Whitworth, Henry E. Mendes, Francis J. Clowes, Victor H. Stempf, Edwin H. Wagner, Sr., Robert C. Brown, William C. Bechert and Jacob P. Friedman were, at all of the times hereinafter mentioned and more particularly during the months of August and September of 1929, copartners doing business as accountants and auditors under the firm name and style of Touche, Niven & Co., and maintained an office for the practice of the profession of accounting and auditing in the City, County and State of New York.

B-3. In or about the month of August, 1929, Williams and Catchings conceived the idea of forming a corporation for the purpose of owning common stocks in various and sundry public utility and industrial corporations.

B-4. Accordingly, and during the month of August, 1929, Williams acting for and on behalf of the Debtor, and Catchings acting for and on behalf of Goldman Sachs Trad- [fol. 31] ing Corporation, caused Shenandoah to organize

Blue Ridge Corporation (hereinafter referred to as "Blue Ridge"), under and pursuant to the laws of the State of Delaware.

B-5. Williams acted as the agent of the Debtor in connection with the organization of Blue Ridge.

B-6. Goldman Sachs & Co. acted as the bankers in connection with the organization of Blue Ridge.

B-7. Shenandoah acted as the sponsor in connection with the organization of Blue Ridge.

B-8. At all the times hereinafter mentioned, and at all the dates subsequent to the organization of Blue Ridge, more particularly described in paragraph "B-4" of this complaint, the following named persons occupied the following positions of trust and responsibility in and with respect to Blue Ridge, to wit:

Harrison Williams, Director;
Clifford E. Stone, Director and President;
Sidney J. Weinberg, Director;
Waddill Catchings, Director;
John Foster Dulles, Director.

B-9. On or about the 17th day of August, 1929, Williams and Catchings orally agreed on the terms and conditions of the financing of Blue Ridge.

B-10. On the 19th day of August, 1929, the oral agreement made by and between Williams and Catchings with respect to the organization and financing of Blue Ridge was reduced to a written contract to which the Debtor, Goldman Sachs Trading Corporation, Shenandoah, Blue Ridge and Goldman Sachs & Co. were parties. A copy of [fol. 32] this agreement is annexed hereto and marked Exhibit "B(1)", and made a part hereof.

B-11. Pursuant to that agreement, Exhibit "B(1)" annexed hereto, Shenandoah agreed to purchase and Blue Ridge agreed to sell 6,250,000 shares of the common stock of Blue Ridge for $62,500,000.

B-12. In order to provide Shenandoah with the funds necessary to pay for the 6,250,000 shares of the common stock of Blue Ridge, the Debtor agreed to purchase from Shenandoah 375,000 shares of Shenandoah's common

stock and 375,000 shares of Shenandoah's preferred stock for the amount of $31,250,000, and Goldman Sachs Trading Corporation agreed to purchase from Shenandoah 375,000 shares of Shenandoah's common stock and 375,000 shares of Shenandoah's preferred stock for the amount of $31,250,000.

B-13. On the 21st day of August, 1929, the Debtor and Blue Ridge entered into an agreement for the purchase and sale of securities, a copy of which is annexed hereto marked Exhibit "B(2)", and made a part hereof. Pursuant to that agreement, the Debtor agreed to sell and Blue Ridge agreed to buy, among other securities, 68,423 shares of the common stock of North American Company for a price fixed in said agreement at $11,426,641.

B-14. On the 3rd day of September, 1929, at a meeting of the board of directors of the Debtor at which were present the following directors, to wit: Fogarty, Glass, Kilmarx, Narlian, Schroeder, Stone and the following officer, namely, Ross, the aforementioned contract between the Debtor and Blue Ridge, Exhibit "B(2)" annexed hereto, was duly ratified, approved and affirmed.

[fol. 33] B-15. During the months of August and September, 1929, and during the period of the organization and financing of Blue Ridge, the Debtor owned in excess of 839,000 shares of the common stock of North American Company, of which 796,578 shares had been acquired by the Debtor at an average cost of $9.69 per share.

B-16. Williams knew at the time said contract Exhibit "B(2)" annexed hereto, was executed between the Debtor and Blue Ridge that the Debtor was fully able to sell and deliver to Blue Ridge 68,423 shares of the common stock of North American Company.

B-17. Williams was at all times familiar with and fully cognizant of the rights of the Debtor as embodied in said contract with Blue Ridge, Exhibit "B(2)" annexed hereto.

B-18. During all of said dates and times Williams was fully cognizant of the Debtor's financial condition and its need for ready cash, as more particularly set forth hereinabove in paragraph "A-23".

B-19. Then and there and prior to the delivery by the Debtor to Blue Ridge of the securities set forth and described in the contract, Exhibit "B(2)" annexed hereto, Williams determined that he would prevent the Debtor from selling to Blue Ridge the entire block of 68,423 shares of the common stock of North American Company and that, for his own individual use and benefit, he would depriye the Debtor of the benefit of said contract to the extent of 68,423 shares of the common stock of North American Company.

B-20. At the time Williams came to this decision he alone was acting as Debtor's agent in connection with the making of the agreements for the financing of Blue Ridge and the [fol. 34] sale to Blue Ridge by the Debtor of the securities set forth and described in Exhibit "B(2)" annexed hereto; accordingly and by reason thereof, Williams was a fiduciary of and for the Debtor in connection with said contract of sale, Exhibit "B(2)" annexed hereto.

B-21. By reason of the facts set forth hereinabove, it was the duty of Williams to further the interests of the Debtor and to refrain from interfering with its contract rights to sell 68,423 shares of the common stock of North American Company to Blue Ridge.

B-22. Despite Williams' duty as a fiduciary of the Debtor not to impair the interests of the Debtor arising out of said contract, Exhibit "B(2)" annexed hereto, and the Debtor's right to sell 68,423 shares of the common stock of North American Company to Blue Ridge for $11,426,641, and in violation of Williams' fiduciary obligations, Williams, Fogarty, Freeman, Glass, Kilmarx, Narlian, Schroeder, Stone and Ross, conspired together and agreed and formed the deliberate design and purpose to misappropriate the benefits of such contract, Exhibit "B(2)" annexed hereto, to the extent of 68,423 shares of North American Company, amounting in price to the sum of $11,426,641, to the sole gain and advantage of Williams.

B-23. The divers acts and things done by Williams, Fogarty, Freeman, Glass, Kilmarx, Narlian, Schroeder, Stone and Ross, as hereinabove alleged and as more particularly set forth hereinafter, were all steps in this design and conspiracy in which all of the said persons named in this paragraph participated, and which were all done for the common purpose of depriving the Debtor of the benefits of

said contract with Blue Ridge, Exhibit "B(2)" annexed hereto, and to enable Williams to sell and deliver the 68,423 shares of the common stock of North American [fol. 35] Company owned by Williams and maintained by him in the names of New Empire Corporation, Electric Investment Corporation, Federal Utilities Inc. and Utilities Securities Corporation, his wholly owned corporate instrumentalities, rather than to permit the Debtor to sell and deliver 68,423 shares of the common stock of North American Company owned by it, as was the Debtor's right under and pursuant to the above mentioned contract with Blue Ridge, Exhibit "B(2)" annexed hereto.

B-24. The Debtor would have been able to realize the sum of $11,426,641 in cash from the sale and delivery of said 68,423 shares of the common stock of North American Company to Blue Ridge, included within the various securities specified in the contract, Exhibit "B(2)" annexed hereto, and would have made a profit on said sale in the amount of $10,763,622.13 but for the fraudulent acts of Williams in abusing the trust and confidence of the Debtor, in taking advantage of and overreaching the Debtor, and in causing the 68,423 shares of the common stock of North American Company owned by Williams and maintained by Williams in the names of New Empire Corporation, Electric Investment Corporation, Federal Utilities Inc. and Utilities Securities Corporation, his wholly owned corporate instrumentalities, to be sold and delivered to Blue Ridge in the place and stead of 68,423 shares of the common stock of North American Company owned by the Debtor, pursuant to the plan, scheme and conspiracy more particularly set forth above.

B-25. The Debtor could and would have performed the contract made by it as aforesaid with Blue Ridge, Exhibit "B(2)" annexed hereto, and the obligations on its part to be performed, according to the terms of said contract, to the Debtor's great gain and profit, more particularly at a time when the Debtor was hard-pressed for ready funds, [fol. 36] but for the violations of fiduciary obligations, duties and trusts and the wrongful acts and conduct of Williams, Fogarty, Freeman, Glass, Kilmarx, Narlian, Schroeder, Stone and Ross, as hereinabove and hereinafter set forth.

B 26. Williams, Fogarty, Freeman, Glass, Kilmarx, Narlian, Schroeder, Stone and Ross, well knowing the facts and transactions hereinbefore set forth and the rights and obligations of the Debtor and the parties in and to the premises, planned and determined that in violation of their fiduciary obligations, duties and trusts as fiduciaries, directors, officers and agents of the Debtor, and in violation of the rights of the Debtor, its then existing and subsequently created stockholders, creditors and debentureholders, they would so proceed as to enable Williams wrongfully to appropriate to his own individual use and benefit and to enable Williams to take, receive, acquire and retain for himself and for his own benefit said contract made as aforesaid by the Debtor with Blue Ridge, Exhibit "B(2)" annexed hereto, to the extent of 68,423 shares of the common stock of North American Company, and any and all rights and benefits accrued or which might accrue to the Debtor under said contract of sale to the extent of said shares of North American Company common stock, and to appropriate and retain to Williams, through his above named wholly owned corporate instrumentalities, the benefits of said contract of sale to the extent of said shares of North American common stock, and to exclude the Debtor therefrom without any consideration therefor; and said persons above named in this paragraph, in violation of their fiduciary obligations, duties and trusts, then and there secretly entered into a corrupt, fraudulent and illegal agreement and conspiracy with each other to do and cause to be done and to accomplish and to cause to be accomplished the aforesaid corrupt, fraudulent and illegal [fol. 37] objects and purposes, and Touche, Niven, Tait, Whitworth, Mendes, Clowes, Stempf, Wagner, Brown, Beckett and Friedman became parties to and acted in said plan, agreement and conspiracy as in this complaint set forth, and the acts and things herein complained of were done by the persons named in this paragraph in aid and in execution of said plan, agreement and conspiracy and said corrupt, fraudulent and illegal objects and purposes.

B 27. Pursuant to said plan and conspiracy, Williams did in fact fraudulently, corruptly and illegally procure Fogarty, Freeman, Glass, Kilmarx, Narlian, Schroeder, Stone and Ross, in violation of their duties, trusts and obligations to the Debtor, to agree on behalf of the Debtor with New Empire Corporation, Electric Investment Corpora-

tion, Federal Utilities Inc. and Utilities Securities Corporation to pay to New Empire Corporation $3,076,641 and to Electric Investment Corporation $1,670,000, and to Federal Utilities Inc. $3,340,000, and to Utilities Securities Corporation $3,340,000, in consideration of the delivery by New Empire Corporation, Electric Investment Corporation, Federal Utilities Inc. and Utilities Securities Corporation of 18,423, 10,000, 20,000 and 20,000 shares respectively, of the common stock of North American Company to Blue Ridge and to exclude the Debtor from its contract right as fixed in Exhibit "B(2)" annexed hereto, to sell and deliver 68,423 shares of the common stock of North American Company owned by the Debtor for the sum of $11,426,641, and said defendants named in this paragraph did in fact corruptly, fraudulently and illegally appropriate the benefits of said contract between the Debtor and Blue Ridge, Exhibit "B(2)" annexed hereto, to the extent of the 68,423 shares of common stock of North American Company to the use of Williams and for Williams' sole benefit, through his above named corporate instrumentalities, and did in fact [fol. 38] permit Williams to take as his own and to receive for his own individual use and benefit the fruits of said contract to the extent of 68,423 shares of the common stock of North American Company, Exhibit "B(2)" annexed hereto.

B-28. The Debtor received no valuable consideration nor any consideration or thing of value whatsoever, and none of the persons named as participating in this transaction paid to the Debtor any consideration at all for said appropriation by Williams of the Debtor's said property and contract right to sell and deliver 68,423 shares of the common stock of North American Company for the sum of $11,426,641, as specified in the agreement, Exhibit "B(2)" annexed hereto.

B-29. Touche, Niven, Tait, Whitworth, Mendes, Clowes, Stempf, Wagner, Brown, Bechert and Friedman cooperated with Williams herein and assisted him in the execution as aforesaid and as hereinafter set forth, of his said plan, agreement and conspiracy, and became parties thereto and to the carrying out thereof in violation of their duties, trusts and obligations to the Debtor, and in complete subservience to the wishes and decisions of Williams, and said persons above named in this paragraph acted as aforesaid with full and complete knowledge of, or being on notice of

and on inquiry as to all the facts herein set forth, the rights and obligations of the parties in and to the premises and the wrongful character of the transactions to which they were parties.

B-30. Pursuant to and in execution of said plan, agreement and conspiracy, and for the accomplishment thereof, Fogarty, Freeman, Glass, Kilmarx, Narlian, Schroeder, Stone, Ross and Williams, did and caused to be done and assisted in the doing of the acts and things hereinbefore [fol. 39] and hereinafter complained of, including among others, the following, to wit:

(a) Sometime in the latter part of the month of August or in the early part of ~~the~~ month of September, 1929, the exact date being now unknown to plaintiffs, they entered into a corrupt, fraudulent and illegal agreement with New Empire Corporation, Electric Investment Corporation, Federal Utilities, Inc. and Utilities Securities Corporation, to pay to said corporations the aggregate sum of $11,426,641 for the delivery by said corporations to Blue Ridge of 68,423 shares of the common stock of North American Company, in the following number of shares and in the following amounts:

Name	Shares	Amount
Utilities Securities	20,000	$3,340,000
Federal Utilities	20,000	3,340,000
Electric Investment	10,000	1,670,000
New Empire Corporation	18,423	3,076,641
Total	68,423	$11,426,641

(b) Thereafter and pursuant to said agreement, and on the 5th day of September, 1929, New Empire Corporation, Electric Investment Corporation, Federal Utilities, Inc. and Utilities Securities Corporation, did deliver the aggregate number of 68,423 shares of the common stock of North American Company to Blue Ridge, and were paid therefor the sum of $11,426,641 by the Debtor on the 23rd day of September, 1929;

(c) Thereafter and pursuant to said agreement and on the 23rd day of October and the 12th day of

November, 1929, they wrongfully caused the sum of $34,279.92 to be paid as purported interest due to New Empire Corporation, Federal Utilities Inc., [fol. 40] Utilities Securities Corporation and Electric Investment Corporation for the period from September 5th to September 23rd, 1929, in the following amounts and on the following dates:

Name	Date	Amount
Electric Investment Corporation	October 23, 1929	$5,010.00
Utilities Securities Corporation	October 23, 1929	10,020.00
Federal Utilities Inc.	October 23, 1929	10,020.00
New Empire Corporation	November 12, 1929	9,229.92

(d) They refrained and caused the Debtor to refrain from delivering 68,423 shares of the common stock of North American Company owned by the Debtor and from receiving $11,426,641 therefor as the Debtor had the right under and pursuant to the aforementioned contract with Blue Ridge, Exhibit "B(2)" annexed hereto;

(e) They refrained and caused the Debtor to refrain from making appropriate and authorized use of the Debtor's own common stock in North American Company, then and there owned and controlled by Debtor and available for delivery to Blue Ridge under and pursuant to said contract with Blue Ridge, Exhibit "B(2)" annexed hereto;

(f) They made no effort whatsoever and caused Debtor to refrain from making any effort whatsoever to fulfill the terms of said contract with Blue Ridge, by delivering to Blue Ridge 68,423 shares of the common stock of North American Company owned by the Debtor for the sole benefit of the Debtor;

(g) They used their positions of trust and responsibility and the powers vested in them by the Debtor [fol. 41] to prevent the Debtor from making any delivery of so much of the common stock of North American Company owned by the Debtor and main-

tained by the Debtor in its own possession and control, as would satisfy the terms and conditions of the contract with Blue Ridge, Exhibit "B(2)" annexed hereto;

(h) They misused the powers entrusted to them by the Debtor and made illegal, corrupt and fraudulent use of their powers for the sole purpose of corruptly enriching Williams, all in violation of their fiduciary duties, obligations and trusts as officers, directors, managers, agents and fiduciaries of and for the Debtor;

(i) They used their positions of trust and responsibility and the powers vested in them by the Debtor for Williams' own profit and for the purpose of depriving the Debtor of property and rights lawfully belonging to the Debtor, and for the purpose of depriving the Debtor of moneys and profits to which the Debtor alone was lawfully entitled, by causing certain corporate instrumentalities of Williams, to wit: New Empire Corporation, Federal Utilities Inc., Utilities Securities Corporation and Electric Investment Corporation, to make delivery to Blue Ridge of 68,423 shares of the common stock of North American Company in the amounts and proportions set forth in subdivision "(a)" hereinabove, in the place and stead of the Debtor delivering 68,423 shares of the common stock of North American Company owned by the Debtor and maintained by it in its possession and control, under and pursuant to said contract with Blue Ridge, Exhibit "B(2)" annexed hereto, for the sum of $11,426,641;

[fol. 42] (j) They directed and instructed Touche, Niven & Company, the accountants and bookkeepers of the Debtor, to make such entries and erasures in the books of original entry and the books of account of the Debtor, as to conceal Debtor's rights under the contract, Exhibit "B(2)" annexed hereto, and to make it appear that New Empire Corporation, Federal Utilities Inc., Utilities Securities Corporation and Electric Investment Corporation, the wholly owned corporate instrumentalities of Williams, were the actual vendors

of said 68,423 shares of the common stock of Nort American Company.

B-31. Pursuant to and in execution of said corrupt fraudulent and illegal plan, scheme and conspiracy, and for the accomplishment thereof, Touche, Niven, Tait, Whitworth, Mendes, Clowes, Stempf, Wagner, Brown, Bechert and Friedman, with full knowledge that Williams was acting in his own individual and personal interest and not for the benefit of the Debtor, assisted Williams in the doing of the acts and things hereinbefore and hereinafter complained of, including among others the following, to wit:

(a) Acting in a fiduciary capacity as the accountants and bookkeepers for the Debtor, and with full knowledge of the terms and conditions of the contract between the Debtor and Blue Ridge, Exhibit "B(2)" annexed hereto, they made and caused to be made improper and fraudulent entries on the books of original entry and books of account of the Debtor with respect to the aforementioned and described 68,423 shares of the common stock of North American Company;

(b) Acting in a fiduciary capacity as the accountants and bookkeepers for the Debtor, and with full knowledge of the terms and conditions of the contract be- [fol. 43] tween the Debtor and Blue Ridge, Exhibit "B(2)" annexed hereto, they refrained from making correct and proper entries in the Debtor's books of account and books of original entry with respect to the aforementioned 68,423 shares of the common stock of North American Company;

(c) Acting in a fiduciary capacity as the accountants and bookkeepers for the Debtor, and with full knowledge of the terms and conditions of the contract between Debtor and Blue Ridge, Exhibit "B(2)" annexed hereto, they actively assisted Williams in the execution of the aforementioned fraudulent and corrupt conspiracy with respect to the sale of 68,423 shares of the common stock of North American Company.

B-32. By reason of the foregoing Williams has made large and substantial profits the exact amounts of which

are unknown to plaintiffs. Williams has invested and reinvested the sums of $11,426,641 and $34,279.92 and by reason thereof has made and earned additional large and substantial profits the exact amounts of which are unknown to plaintiffs at the present time.

B-33. Williams took and received for his own individual use and benefit the said $11,426,641 obtained by New Empire Corporation, Federal Utilities Inc., Utilities Securities Corporation and Electric Investment Corporation, for the delivery of the aforementioned 68,423 shares of the common stock of North American Company, and held and now holds the said $11,426,641 and all the profits derived therefrom in trust as the property of the Debtor herein and of plaintiffs as Trustees of said Debtor.

B-34. Williams took and received the sum of $34,279.92 obtained by New Empire Corporation, Federal Utilities [fol. 44] Inc., Utilities Securities Corporation and Electric Investment Corporation, as purported interest from the Debtor, as more particularly described hereinabove in paragraph "B-30 (c)", and now holds the said $34,279.92 and all the profits derived therefrom in trust as the property of the Debtor herein and of plaintiffs as Trustees of said Debtor.

B-35. By reason of the premises, each of the persons named as participants herein has become and is now liable to account to the Debtor and to plaintiffs as Trustees thereof, as aforesaid, for the sums of $11,426,641 and $34,279.92, received by Williams in the names of his corporate creatures, New Empire Corporation, Federal Utilities Inc., Utilities Securities Corporation and Electric Investment Corporation, for the delivery by said New Empire Corporation, Federal Utilities Inc., Utilities Securities Corporation and Electric Investment Corporation, of 68,423 shares of the common stock of North American Company to Blue Ridge as aforesaid.

B-36. No part of the said $11,426,641 and $34,279.92, for which each of the persons named as participating in this transaction are liable and accountable as aforesaid, has ever been paid or returned to said debtor or to plaintiffs as Trustees thereof, in restitution or restoration, or as compensation for losses and damages caused to said Debtor

or plaintiffs as its Trustees, by the corrupt, fraudulent and illegal acts as aforesaid.

B-37. The Debtor is entitled to recover from Williams, New Empire Corporation, Federal Utilities Inc., Utilities Securities Corporation and Electric Investment Corporation the sums of $11,426,641 and $34,279.92 with appropriate interest, together with all profit derived therefrom by said Williams, New Empire Corporation, Federal Utilities Inc., Utilities Securities Corporation and Electric Investment [fol. 45] Corporation, in restitution and restoration of the losses and damages caused to the Debtor by Williams' corrupt, fraudulent and illegal acts, and plaintiffs and the Debtor stand ready to deliver to Williams, New Empire Corporation, Federal Utilities Inc., Utilities Securities Corporation and Electric Investment Corporation, and do hereby tender to said Williams, New Empire Corporation, Federal Utilities Inc., Utilties Securities Corporation and Electric Investment Corporation 68,423 shares of the common stock of North American Company and all the dividends and benefits accrued, accruing or incident to the ownership of the above described shares of the common sfock of North American Company from the 5th day of September 1929 up to and including the present date.

B-38. The Debtor is entitled to recover from Williams, New Empire Corporation, Federal Utilities Inc., Utilities Securities Corporation and Electric Investment Corporation the sum of $10,763,622.13, together with interest thereon from September 5, 1929.

C-1. Another transaction wherein Williams violated his fiduciary obligations to the Debtor is shown by his dealings in the "B" stock of American Cities Power & Light Corporation, now to be related by plaintiffs.

C-2. During the month of October, 1928, Debtor caused to be organized American Cities Power & Light Corporation (hereinafter referred to as "American Cities"), under and pursuant to the laws of the State of Virginia.

C-3. American Cities was organized with a capital of 2,000,000 shares of common stock denominated as Class "B" stock and 400,000 shares of preference stock denominated as Class "A" stock.

[fol. 46] C-4. In connection with the financing and organization of American Cities the Debtor purchased and acquired 1,600,000 shares of American Cities Class "B" stock at a net cost per share of $10.10.

C-5. By reason of his own-ship of 96% of the common stock of the Debtor Williams had a personal interest in maintaining the market price of the common stocks of the Debtor and American Cities.

C-6. Determined to maintain the market price of these stocks Williams caused Nasco, his wholly owned corporate instrumentality, to engage in trading operations from and after the organization of American Cities and up to and through the month of October, 1929, in the common stocks of American Cities and the Debtor.

C-7. In order to enable Nasco to engage in this venture and market operation, Williams caused the Debtor to lend to Nasco various sums of money in the amounts and at the times specified in paragraph "A-22" of this complaint.

C-8. In connection with the above described market operation Nasco purchased directly from the Debtor 65,600 shares of American Cities "B" stock at a price of $20. per share, amounting in the aggregate to the sum of $1,312,000.

C-9. In connection with the above described market operation, Nasco purchased from other individuals and sources 484,603 shares of American Cities "B" stock at a price aggregating the sum of $19,324,891.56.

C-10. During the course of this market operation, Nasco received as stock dividends declared by American Cities 3,448.979 shares of American Cities "B" stock.

[fol. 47] C-11. In the course of said market operation, Nasco sold 495,772 shares of the Class "B" stock of American Cities at a price amounting to the aggregate total of $18,548,746.74.

C-12. On the 31st day of October, 1929, and at or about the conclusion of said market operation, Nasco was in the possession of 57,879.979 shares of American Cities Class "B" stock. Subsequent to the said 31st day of October, 1929, and because of defaults of various purchasers, Nasco came into possession of an additional 12,316 shares of American Cities Class "B" stock.

C-13. On the said 31st day of October, 1929, and as the result of said venture, Williams, through Nasco had spent the sum of $2,088,144.82 in connection with the acquisition of said 57,879.979 shares of American Cities "B" stock.

C-14. On said 31st day of October, 1929, and as a result of said market operation in American Cities Class "B" stock Williams, through Nasco, his corporate creature, had incurred a loss and in addition owed the Debtor $10,477,000.

C-15. In connection with the above described market operation by Nasco which was financed by the loans from the Debtor to Nasco, as more particularly set forth in paragraph "A-22" hereinabove, Williams, through Nasco, made large and substantial profits, the exact amounts of which are unknown to plaintiffs at the present time.

C-16. Desiring to retain to himself and for his own benefit the profits described in paragraph "C-15" of this complaint, and at the same time desiring to avoid and minimize said loss and desiring to avoid and minimize any future risk of loss, and further desiring to reduce the amount of [fol. 48] Nasco's indebtedness to the Debtor, Williams on or about the 3rd day of December, 1929, or at some time shortly prior thereto, the exact date being unknown at the present time to plaintiffs, determined and decided that he would not bear the entire loss of this market operation and venture, and determined and decided that he would cause the Debtor to assume Nasco's investment in American Cities Class "B" stock in the manner and pursuant to the scheme, plan and device hereinafter to be outlined and related.

C-17. At the time Williams came to this decision he was, as has been more particularly related above, a fiduciary of and for the Debtor, its dominant stockholder, its managing director in fact, though not in name, the dictator of its policies, and the owner of 100% of the common stock of Nasco, his corporate creature.

C-18. By reason of the facts above set forth and particularly by reason of the loans which Williams caused the Debtor to make to Nasco, to enable Nasco to engage in the above described market operation, it was the duty of Williams to further the interests of the Debtor and to refrain from causing the Debtor to assume his personal invest-

ments which had become onerous and burdensome to him, and to make the Debtor whole with respect to the above described loans from the Debtor to Nasco, by causing the repayment of said loans in full in cash together with accrued interest, and to account to the Debtor for the substantial profits which he had made through the use of the Debtor's funds.

C-19. Despite Williams' duty as a fiduciary of the Debtor to further Debtor's interest, and in violation of his fiduciary obligations, Williams, Fogarty, Freeman, Glass, Kilmarx, Narlian, Schroeder, Stone and Ross conspired together [fol. 49] and agreed and formed the deliberate design and purpose to cause the Debtor to assume the investment resulting from the above described market operation by Nasco, to the extent of 57,879.979 shares and such other shares as might be returned to Nasco by defaulting purchasers.

C-20. The divers acts and things done by Williams, Fogarty, Freeman, Glass, Kilmarx, Narlian, Schroeder, Stone and Ross, as hereinabove alleged and as more particularly set forth hereinafter, were all steps in this design and conspiracy in which all of the persons named in this paragraph participated, and which were all done for the common purpose of foisting upon the Debtor the shares of American Cities Class "B" stock acquired by Williams through his creature Nasco in the market operation conducted by Nasco above described, and to enable Williams to reduce the amount of Nasco's indebtedness to the Debtor without the payment of cash funds.

C-21. Accordingly, Williams, Fogarty, Freeman, Glass, Kilmarx, Narlian, Schroeder, Stone and Ross, well knowing the facts and transactions hereinbefore set forth and the rights and obligations of the parties in and to the premises, planned and determined that in violation of their fiduciary obligations, duties and trusts as fiduciaries, directors, officers and agents of the Debtor, and in violation of the rights of the Debtor, its then existing and subsequently created stockholders, debentureholders and creditors, they would so proceed as to enable Williams fraudulently, illegally and corruptly to foist upon the Debtor in Williams' interest and against the Debtor's interest the above described 70,195.979 shares of American Cities Class

"B" stock, thereby limiting the then existing loss incurred by Williams through his creature Nasco in the above described market operation, and at the same time causing [fol. 50] the Debtor to credit Nasco with the sum of $1,754,899.48 without the payment of any cash by Nasco, and the persons above named in this paragraph, in violation of their fiduciary obligations, duties and trusts, then and there secretly entered into a corrupt, fraudulent, unlawful and illegal agreement and conspiracy with each other to do, and to cause to be done and to accomplish and cause to be accomplished the aforesaid corrupt, fraudulent and illegal objects and purposes, and Nasco became a party to and acted in said plan, agreement and conspiracy, and the acts and things herein complained of were done by Nasco and the persons above named in this paragraph in aid and execution of said plan, agreement and conspiracy and said illegal, corrupt and fraudulent objects and purposes.

C-22. Pursuant to said plan, agreement and conspiracy, Williams did in fact procure Fogarty, Freeman, Glass, Kilmarx, Narlian, Schroeder, Stone and Ross, in violation of their duties, trusts and obligations to the Debtor, to take over from Nasco 70,195.979 shares of American Cities Class "B" stock at a price amounting to the sum of $1,754,899.48 and to apply said sum upon Nasco's indebtedness to the Debtor, more particularly described hereinabove in paragraph "A-22" of this complaint, and said persons named in this paragraph did in fact illegally, corruptly and fraudulently cause these acts to be done for the sole use and benefit of Williams, and did thereby in fact permit Williams to foist upon the Debtor the said 70,195.979 shares of American Cities Class "B" stock.

C-23. Pursuant to and in execution of said plan, agreement and conspiracy, and for the accomplishment thereof, Fogarty, Freeman, Glass, Kilmarx, Narlian, Schroeder, Stone and Ross did and caused to be done and assisted in [fol. 51] the doing of the acts and things hereinbefore and hereinafter complained of, including among others the following, to wit:

(a) They cooperated with Williams so as to cause it to appear that the venture by Nasco in American Cities Class "B" stock above described was to be deemed as though accomplished and done by Nasco

as agent for the Debtor, when in truth the contrary was the fact;

(b) They conspired with Williams to cover up, conceal and hide the fact that Nasco had for Williams' individual account conducted the market supporting operation in American Cities Class "B" stock, and instead agreed to act as though Nasco's market operation had been conducted for the account of the Debtor;

(c) They directed the officers of the Debtor to take over from Nasco 70,195.979 shares of American Cities Class "B" stock, acting on the false pretense that the market operation wherein said shares had been accumulated had been conducted for and on behalf of the Debtor;

(d) At a meeting of the Board of Directors of the Debtor held on the 3rd day of December, 1929, they caused pretended proceedings to be taken and pretended minutes to be made on the false assumption that the officers of the Debtor had theretofore taken over from Nasco its position with respect to the above-mentioned American Cities Class "B" stock, when the fact was that the officers had not so acted;

(e) Accordingly, said directors at the above described meeting adopted a purported resolution which [fol. 52] was false and fraudulent in fact, in the following words and figures, to wit:

"After a statement of explanation by the President, on motion duly made and seconded it was unanimously

"RESOLVED, that the action of the officers in behalf of this Corporation in taking over from North American Securities Company its position in the matter of B Stock of American Cities Power & Light Corporation (i. e., stock on hand and stock redeliverable to it upon sales not consummated) as of October 31, 1929, at market price of $25 as of that date, be and it hereby is approved."

(f) They caused the books of the Debtor to be altered, manipulated, erased and otherwise disturbed,

so as to show a false condition, and one which was not true in fact, namely, that the market operation conducted by Williams through Nasco in American Cities "B" stock as above described, was done as agent for the Debtor;

(g) They credited the indebtedness of Nasco to the Debtor on the Debtor's books with the sum of $1,754,899.48;

(h) They misrepresented to the Debtor's accountants and bookkeepers the true state of facts and affairs for the purpose of inducing said accountants and bookkeepers to make improper entries on the Debtor's books;

(i) By reason of said misrepresentations which they made to the Debtor's accountants and bookkeepers, they caused the accountants and bookkeepers to make entries and erasures on the Debtor's books and records [fol. 53] which were untrue, were false in fact, improper, were fraudulent and designed to conceal the true state of affairs;

(j) They made no effort whatsoever and caused the Debtor to refrain from making any effort whatsoever to impede Williams in the carrying out of his unlawful, fraudulent and corrupt conspiracy;

(k) They used their positions of trust and responsibility and the powers vested in them by the Debtor to aid and assist Williams in the carrying out of all the details of the above described fraudulent and corrupt plan;

(l) They misused the powers entrusted to them by the Debtor and made corrupt, fraudulent and illegal use of their said powers for the purpose of corruptly protecting Williams and relieving him of an onerous obligation and foisting an investment of Nasco on the Debtor, all in violation of their fiduciary duties, obligations and trusts as officers, directors and fiduciaries of and for the Debtor;

(m) They used their positions of trust and responsibility and the powers vested in them by the Debtor for the benefit of Williams and for the purpose of enabling

Williams to dump on the Debtor an onerous investment incurred by Williams, through Nasco, as a result of the above described market operation by Nasco in American Cities "B" stock.

C-24. Williams and Nasco were benefitted and enriched as a result of the above described unlawful, corrupt and fraudulent plan and conspiracy, and the Debtor thereby suffered great loss and harm.

C-25. Williams and Nasco have invested and reinvested the said $1,754,899.48, and the large and substantial profits [fol. 54] made and earned in connection with the trading in the Debtor's common stock, and by reason thereof have made and earned additional large and substantial profits the exact amounts of which are unknown to plaintiffs at the present time.

C-26. Since the conclusion of the above-described fraudulent plan and corrupt conspiracy, Williams and Nasco have held and now hold the said sum of $1,754,899.48 and all the profits derived therefrom and all the profits made and earned in connection with the market operation of Nasco in and with respect to the common stock of the Debtor as above set forth, in trust as the property of the Debtor herein, and plaintiffs as Trustees of said Debtor.

C-27. No part of said $1,754,899.48 and no part of the additional profits made and earned by Williams through Nasco in connection with the above described market operation, conducted by Nasco in and with respect to the common stock of the Debtor, for which defendants are accountable and liable as aforesaid has ever been paid or returned to the Debtor or to plaintiffs as Trustees thereof.

C-28. By reason of the premises each of the persons named as participants herein has become and is now liable to account to the Debtor and to plaintiffs as Trustees thereof as aforesaid for all the losses and damages and in addition, Williams is liable to account to the Debtor and to plaintiffs as Trustees thereof for all the profits made by use of the Debtor's funds, as aforesaid.

C-29. Debtor is entitled to recover from Williams and Nasco the sum of $1,754,899.48 with appropriate interest together with all profits derived therefrom by said defendants, in restitution and restoration of the losses and dam-

ages caused to the Debtor by Williams' illegal, corrupt and [fol. 55] fraudulent acts, and plaintiffs and the Debtor stand ready to deliver to Williams and Nasco and do hereby tender to said defendants 70,195.979 shares of American Cities Class "B" stock and all the dividends and benefits accrued, accruing or incident to the ownership of the above described shares of American Cities Class "B" common stock, from the 3rd day of December, 1929, up to and including the present date, and, in addition, Debtor is entitled to recover from Williams and Nasco all the profits made by them in the above described market operation in and with respect to the Debtor's common stock.

D-1. Another transaction wherein Williams violated his fiduciary obligations to the Debtor is shown by his dealings in the preferred stock of the Debtor now to be related by plaintiffs.

D-2. During the month of September, 1928, the Debtor issued and caused to be sold to numerous holders thereof 110,000 shares of a certain preferred stock of the Debtor described and denominated as "convertible preferred stock, optional dividend series" herein referred to as the "convertible preferred stock of 1928." Each share of said convertible preferred stock of 1928 was convertible at the option of the owner thereof into the Debtor's common stock at the rate of one share of common stock for each $118. par value of said convertible preferred stock of 1928. Thereafter, and by reason of declarations of stock dividends by the Debtor in and with respect to its own common stock, each said share of the convertible preferred stock of 1928 of the Debtor was convertible at the option of the owners and holders thereof into the common stock of the Debtor at the rate of one share of common stock for each $19.67 par value of said convertible preferred stock of 1928. Each said share of the convertible preferred stock of 1928 was redeemable [fol. 56] by the Debtor at any time on notice to the holders thereof at the rate of $110. per share plus accrued and unpaid dividends. The conversion rights of the owners and holders of said convertible preferred stock of 1928 terminated on the 25th day next following the Debtor's issuance of a notice of call for redemption of said convertible preferred stock of 1928 pursuant to the Debtor's power to redeem said convertible preferred stock of 1928.

D-3. During the month of June, 1929, the Debtor issued and caused to be sold to numerous owners and holders thereof 115,500 shares of a certain preferred stock of the Debtor described and denominated as "convertible preferred stock optional dividend series", herein referred to as the "convertible preferred stock of 1929." Each share of said convertible preferred stock of 1929 was convertible at the option of the owner and holder thereof into the Debtor's common stock at the rate of one share of common stock for each $118. par value of said convertible preferred stock of 1929. Thereafter and by reason of declarations of stock dividends by the Debtor in and with respect to its own common stock, each said share of the convertible preferred stock of 1929 of the Debtor was convertible at the option of the owners and holders thereof into the common stock of the Debtor at the rate of one share of common stock for each $39.33 par value of said convertible preferred stock of 1929. Each said share of the convertible preferred stock of 1929 was redeemable by the Debtor at any time on notice to the holders thereof at the rate of $110. per share plus accrued and unpaid dividends. The conversion rights of the owners and holders of said convertible preferred stock of 1929 terminated on the 25th day next following the Debtor's issuance of a notice of call for redemption of said convertible preferred stock of 1929, pursuant to the Debtor's power to redeem said convertible preferred stock of 1929.

[fol. 57] D-4. By reason of his ownership of upwards of 96% of the common stock of the Debtor, Williams had a personal interest in maintaining the market price of the common stock of the Debtor.

D-5. Determining to maintain the price of the common stock of the Debtor, Williams caused Nasco to engage in trading operations in the common stock of the Debtor beginning approximately with the year 1927 and extending continuously to and including 1936. During the course of said market operation Williams caused Nasco to purchase upwards of $32,000,000 worth of the common stock of the Debtor during the year 1929 and to sell during the same year upwards of $26,000,000 worth of the common stock of the Debtor exclusive of the sale of 96,154 shares of the common stock of the Debtor referred to in paragraphs

"A-36" to "A-60" of this complaint and other special sales.

D-6. During the course of the year 1929, the respective market prices of the Debtor's common stock and the Debtor's convertible preferred stocks of 1928 and 1929 were not equivalent in value, taking into account the conversion privileges attached to said convertible preferred stocks of 1928 and 1929, so that it became advantageous to the various owners and holders of the convertible preferred stocks of the Debtor to convert their said convertible preferred stocks into the common stock of the Debtor, and thereafter sell said shares on the market, thereby realizing a profit to themselves by reason of said conversion. Accordingly, and by reason of the aforementioned facts, professional speculators and market arbitrageurs would sell the common stocks of the Debtor which they did not own or possess at the time of the sale, and would complete the transaction and make delivery of the common stocks thereby sold by obtaining common stock from the Debtor by the [fol. 58] exercise of the conversion privileges attached to the convertible preferred stocks of the Debtor, as more particularly described hereinabove.

D-7. As a result of the facts hereinbefore pleaded, the market price of the Debtor's common stock was thereby depressed from time to time.

D-8. Because of Williams' investment in the common stock of the Debtor it was against his personal interest to permit the market price of the Debtor's common stock to depreciate.

D-9. Although the depression in the market value of the Debtor's common stock was contrary to the personal interest of Williams, it did not affect the asset value of the Debtor or its net worth and was a matter of complete indifference to the Debtor.

D-10. Desiring to avoid the impairment to his personal fortune caused by the depressive effect on the price of the common stock of the Debtor through the above described market operations of professional speculators and market arbitrageurs, Williams determined to prevent and to render difficult and uneconomic the aforesaid market operations by causing the market price of the Debtor's common

stock to be maintained at an exchange parity with respect to the aforesaid convertible preferred stocks.

D-11. In order to achieve said purpose, Williams determined to cause the Debtor to purchase with its own funds sufficient amounts in number of the shares of its convertible preferred stocks as to achieve an exchange parity in price on the market of said convertible preferred stocks with respect to the Debtor's common stock.

D-12. Accordingly, Williams, Fogarty, Freeman, Glass, Kilmarx, Narlian, Schroeder, Stone and Ross, well know- [fol. 59] ing the facts and transactions hereinbefore set forth, and the rights and obligations of the parties in and to the premises, planned and determined that in violation of their fiduciary obligations, duties and trusts as fiduciaries, directors, officers and agents of the Debtor, and in violation of the rights of the Debtor, its then existing and subsequently created stockholders, debentureholders and creditors, they would so proceed as to enable Williams corruptly, fraudulently and illegally to carry out his above described plan and purpose for his own personal benefit and to the Debtor's harm and loss, by causing the Debtor to purchase in Williams' own personal interest a net amount of 22,747 shares of the Debtor's convertible preferred stock of 1928 at a cost of $3,894,432.70; and a net amount of 28,432 shares of Debtor's convertible preferred stock of 1929 at a cost of $5,160,993.86, resulting in a total net expenditure of $9,055,426.56 for the repurchase of said convertible preferred stocks, and said persons above named in this paragraph, in violation of their fiduciary obligations, duties and trusts, then and there secretly entered into an illegal, corrupt and fraudulent agreement, plan and conspiracy with each other and with Williams, to cause to be done and to accomplish and cause to be accomplished the aforesaid illegal, corrupt and fraudulent objects and purposes, and Williams, Fogarty, Freeman, Glass, Kilmarx, Narlian, Schroeder, Stone and Ross, became parties to and acted in said plan, agreement and conspiracy as herein set forth, and the acts and things herein complained of were done by the said persons above named in this paragraph, in aid and execution of said plan, agreement and conspiracy and said corrupt, fraudulent and illegal objects and purposes.

D-13. Pursuant to and in execution of said plan, agreement and conspiracy, and for the accomplishment thereof, Williams, Fogarty, Freeman, Glass, Kilmarx, Narlian, Schroeder, Stone and Ross did and caused to be done and [fol. 60] assisted in the doing of the acts and things hereinbefore and hereinafter complained of, including among others the following, to wit:

(a) They caused the Debtor to repurchase a net amount of 22,747 shares of the Debtor's convertible preferred stock of 1928 for the sum of $3,894,432.70, and a net amount of 28,432 shares of the convertible preferred stock of 1929 for the sum of $5,160,993.86;

(b) They caused the Debtor to expend the net sum of $9,055,426.56 of its own funds in accomplishing said purchases at a time when the Debtor was hard-pressed for ready cash, as more particularly hereinabove outlined and set forth in paragraph "A-23" of this complaint, and for the accomplishment of this purpose they caused the Debtor to increase its borrowings from banks and its funded indebtedness;

(c) They caused said acts to be done entirely in the personal interest of Williams;

(d) They caused said acts to be done, well knowing that they were entirely contrary to the interests of the Debtor;

(e) They caused said purchases to be made and said acts to be done at a time when the Debtor was obligated in amounts exceeding the sum of $44,000,000 to the owners and holders of various debentures made and issued by the Debtor and at a time when the Debtor was obligated to various banks in various amounts aggregating up to and including the sum of $14,000,000;

(f) They caused said acts to be done and said purchases to be made and said sums of money to be expended in violation of their duties and trusts and obligations to the Debtor;

[fol. 61] (g) They cooperated with Williams to cause the Debtor to make said purchases and expenditures contrary to the Debtor's own interest;

(h) They conspired with Williams to cover up, conceal and hide the real purpose of said purchases by failing to take any proceedings as the board of directors of the Debtor in connection with the initiation of said acts and purchases, and by failing to record any minutes of any decision on the minute book or other record of the Debtor of any determination by them to make said purchases and expenditures of the Debtor's money in Williams' own personal interest, and by instructing the officers of the Debtor to cause said purchases to be made and the Debtor's moneys and funds to be expended for said purchases in the sole interest of Williams, not having established said action as a duly authorized corporate act and policy of the Debtor;

(i) They refrained and caused the Debtor to refrain from making any effort whatsoever to impede and prevent Williams from the carrying out of his illegal, fraudulent and corrupt conspiracy;

(j) They refrained and caused the Debtor to refrain from exercising its contract and legal rights to redeem said convertible preferred stocks of the Debtor at the respective redemption values thereof, well knowing that the exercise of the Debtor's legal and contract rights of redemption of the above described convertible preferred stocks was contrary to the interest of Williams and not desired by him, in that the effect of a notice of call of redemption by the Debtor would have precipitated a flood of conversions by the owners and holders of the above mentioned preferred stocks which would have resulted in further depressing the market [fol. 62] price of the Debtor's common stock, contrary to the personal and individual interest of Williams;

(k) They misused the powers entrusted to them by the Debtor and made corrupt, fraudulent and illegal use of their said powers for the purpose of corruptly aiding and enriching Williams and abetting and favoring the execution of Williams' immoral and corrupt purposes, all in violation of their fiduciary duties, obligations and trusts as officers, directors, agents and fiduciaries of and for the Debtor;

(l) They used their positions of trust and responsibility and the powers vested in them by the Debtor for Williams' sole benefit and to deprive the Debtor of contract rights lawfully belonging to the Debtor, and to prevent the Debtor from exercising its lawful and contract rights with respect to redemption privileges.

D-14. The effectuation of the aforementioned corrupt and fraudulent plan, scheme and conspiracy, achieved the same result as if Williams, well knowing all the foregoing facts and circumstances, had purchased the above described shares of the Debtor's convertible preferred stock and had immediately thereupon resold the said shares for the sum of $9,055,426.56 to the Debtor with full knowledge that at said time the Debtor was obligated to debentureholders and creditors in an amount aggregating a total exceeding the sum of $50,000,000.

D-15. Williams was benefitted and enriched as a result of the above described unlawful, corrupt and fraudulent plan and conspiracy and the effectuation thereof, and the Debtor suffered grievous harm thereby.

[fol. 63] D-16. No part of the $9,055,426.56 for which the persons participating in this transaction are accountable and liable as aforesaid has ever been paid or returned to said Debtor, or to plaintiffs as Trustees thereof, in restitution or restoration or as compensation for the losses and damages caused to said Debtor or plaintiffs as its Trustees, by reason of the corrupt, fraudulent and illegal acts aforesaid.

D-17. By reason of the aforesaid corrupt and fraudulent acts and conspiracy, the Debtor has been damaged in the sum of $9,055,426.56, with interest thereon from the respective dates of the expenditures made pursuant to the above mentioned fraudulent and corrupt plan and conspiracy, and each of the persons named as participants herein has become and is now liable to account to the Debtor and to plaintiffs as Trustees thereof as aforesaid for the sum of $9,055,426.56.

D-18. Debtor is entitled to recover from Williams the sum of $9,055,426.56 with appropriate interest in restitution and restoration of the losses and damages caused to it by Williams' illegal, corrupt and fraudulent acts, and

plaintiffs and the Debtor stand ready to treat and consider Williams as the owner and holder of 22,747 shares of the convertible preferred stock of 1928 of the Debtor, and 28,432 shares of the convertible preferred stock of 1929 of the Debtor, and to deliver and return to him all the dividends and benefits accruing or incident to the ownership of the above described shares from the dates of the respective purchases thereof up to and including the present date, including any and all rights accruing or pertaining to said shares by reason of any reorganization plan or agreement to be made in the reorganization proceeding above described in paragraph "A-2" of this complaint, subject to any adjustments, liens or accountings required to be made in equity and good conscience.

[fol. 64] E-1. Another transaction wherein Williams violated his fiduciary obligations to the Debtor is shown by his dealings in the exchange of Electric Shareholdings stock for the common stock of Blue Ridge, now to be related by plaintiffs.

E-2. During the month of November, 1938, the Debtor owned 660,569 shares of the common stock of Electric Shareholdings Corporation, a corporation organized under the laws of the State of Delaware, and through Utilities Shares Corporation, Debtor's wholly owned subsidiary, Debtor owned 76,620 additional shares of Electric Shareholdings common stock.

E-3. In or about the month of November, 1938, Williams conceived the idea of having the Debtor exchange its holdings in the common stock of Electric Shareholdings for shares of the commmon stock of Blue Ridge in which the Debtor had a substantial minority interest.

E-4. Accordingly, and during the month of November, 1938, Williams acting for and on behalf of the Debtor and Earl Baillie acting for and on behalf of Tri-Continental Corporation, a corporation organized under the laws of the State of Virginia, and Selected Industries Incorporated, a corporation incorporated under the laws of the State of Maryland (hereinafter referred to as the "Tri-Continental interests"), orally agreed that the Debtor and the Tri-Continental interests would exchange their respective holdings in the common stocks of Electric Share-

holdings and Blue Ridge at the ratio of one share of the common stock of Electric Shareholdings for 1½ shares of the common stock of Blue Ridge.

E-5. At the time that he participated in the oral negotiations with Earl Baillie as aforesaid, Williams was a [fol. 65] fiduciary of and for the Debtor and was the owner of the majority of the common stock of the Debtor.

E-6. No one but Williams participated in these negotiations with the representatives of the Tri-Continental interests on behalf of the Debtor.

E-7. Williams acted as the sole agent of the Debtor in connection with said negotiations with the Tri-Continental interests with respect to the above described exchange.

E-8. At the time that he participated in the above described negotiations and in the formation of the oral agreement above described Williams knew or should have known that the Debtor owned 660,569 shares of the common stock of Electric Shareholdings, and through Utilities Shares Corporation the Debtor owner 76,620 additional shares of the common stock of Electric Shareholdings.

E-9. During all these times New Empire owned 12,900 shares of the common stock of Electric Shareholdings and Onondaga owned 2,700 shares of the common stock of Electric Shareholdings.

E-10. Then and there and prior to the execution of the written agreement, more particularly set forth, and described herein in paragraph "E-12" of this complaint, Williams determined that he would prevent the Debtor from obtaining the full benefits of said agreement and that for his own use and benefit he would deprive the Debtor of the full benefit of said contract to the extent of the holdings of the common stock of Electric Shareholdings of New Empire and Onondaga, his wholly owned corporate instrumentalities.

E-11. At the time Williams came to this decision he alone was acting as the Debtor's agent in connection with [fol. 66] the making of the agreement for the exchange of the Debtor's holdings of the common stock of Electric Shareholdings for the common stock of Blue Ridge. Accordingly and by reason of these facts Williams was a fidu-

ciary of and for the Debtor in connection with said contract.

E-12. On the 18th day of November, 1938, the oral agreement made by and between Williams and Earl Baillie with respect to the exchange of the common stocks of Electric shareholdings and Blue Ridge was reduced to a written contract to which the Debtor, American Cities, Tri-Continental Corporation and Selected Industries Incorporated were parties. A copy of this agreement is annexed hereto and marked Exhibit "E" and made a part hereof.

E-13. Pursuant to this agreement, Exhibit "E" annexed hereto, the Debtor agreed to exchange 594,432 shares of the common stock of Electric Shareholdings for 891,648 shares of the common stock of Blue Ridge.

E-14. Williams was familiar with and was fully cognizant of the rights of the Debtor as embodied in said contract Exhibit "E" annexed hereto.

E-15. By reason of the facts set forth hereinabove it was the duty of Williams to further the interests of the Debtor and to refrain from interfering with its contract right to make the aforementioned exchange of the common stocks of Electric Shareholdings for Blue Ridge.

E-16. At a time when the Debtor was entitled by contract to 891,648 shares of the common stock of Blue Ridge on delivery by it of 594,432 shares of the common stock of Electric Shareholdings, pursuant to the agreement Ex-[fol. 67] hibit "E" annexed hereto, which contract the Debtor was fully able to perform, Williams, the Debtor's dominant stockholder and managing fiduciary, caused the Debtor against its own interest, to exchange 19,350 shares of the common stock of Blue Ridge for 12,900 shares of the common stock of Electric Shareholdings with New Empire, and to exchange 4,050 shares of Blue Ridge for 2,700 shares of the common stock of Electric Shareholdings with Onondaga. Said conduct and action by Williams was corrupt, fraudulent and illegal and resulted in a loss to the Debtor of the benefits of the aforementioned contract to the extent of the shares of the common stock of Blue Ridge exchanged by it with Williams through New Empire and Onondaga, his wholly owned corporate creatures.

E-17. Despite Williams' duty as a fiduciary of the Debtor not to impair the interests of the Debtor arising out of the said contract, Exhibit "E" annexed hereto, and the Debtor's right to exchange 594,432 shares of the common stock of Electric Shareholdings for 891,648 shares of the common stock of Blue Ridge, and in violation of his fiduciary obligations, Williams, Finney, Johnson, Kilmarx, McCornack, Smith and Andersen, conspired together and agreed and formed the deliberate design, plan and purpose to misappropriate the benefits of said contract to the extent of 15,600 shares of the common stock of Electric Shareholdings owned by Williams in the names of New Empire and Onondaga to the gain and advantage of Williams.

E-18. The divers acts and things done by said Williams, Finney, Johnson, Kilmarx, McCornack, Smith and Andersen, as hereinabove alleged and as more particularly set forth hereinafter, were all steps in this design and conspiracy in which all of the said persons named in this [fol. 68] paragraph participated, and which were all done for the common purpose of depriving the Debtor of the benefits of said contract with the Tri-Continental interests, Exhibit "E" annexed hereto, and to enable Williams to exchange the shares of the common stock of Electric Shareholdings owned by him and maintained in the names of Onondaga and New Empire, his wholly owned corporate instrumentalities, for shares of the common stock of Blue Ridge owned by the Debtor rather than permit the Debtor to exchange its own shares of the common stock of Electric Shareholdings Corporation to the extent of 15,600 shares in number, as was its right under and pursuant to the above mentioned contract, Exhibit "E" annexed hereto.

E-19. The Debtor would have been able to retain 23,450 shares of the common stock of Blue Ridge by the exchange of 15,600 shares of the common stock of Electric Shareholdings included within the 594,432 shares of the common stock of Electric Shareholdings specified in the contract, Exhibit "E" annexed hereto, but for the fraudulent acts of Williams in abusing the trust and confidence of the Debtor, in taking advantage of, and overreaching the Debtor, and in causing 15,600 shares of the common stock of Electric Shareholdings owned by Williams and maintained in the names of New Empire and Onondaga, his wholly owned corporate instrumentalities, to be exchanged

for 23,400 shares of the common stock of Blue Ridge in the place and stead of 15,600 shares of the common stock of Electric Shareholdings owned by the Debtor pursuant to the plan, scheme and conspiracy more particularly elaborated and set forth herein.

E-20. Williams, Finney, Johnson, Kilmarx, McCornack, Smith and Andersen, well knowing the facts and trans- [fol. 69] actions hereinbefore set forth and the rights and obligations of the Debtor and the parties in and to the premises, planned and determined that in violation of their fiduciary obligations, duties and trusts as fiduciaries, directors, officers and agents of the Debtor, and in violation of the rights of the Debtor, its then existing and subsequently created stockholders, debentureholders and creditors, they would so proceed as to enable Williams wrongfully to appropriate to his own use and benefit and to enable him to take, receive, acquire and to retain for himself and for his own benefit said contract made as aforesaid by the Debtor with the Tri-Continental interests, Exhibit "E" annexed hereto, to the extent of 23,400 shares of the common stock of Blue Ridge and any and all rights and benefits accruing or which might accrue to Debtor under said contract, and to appropriate and retain the benefits of said contract and to exclude the Debtor therefrom to the extent of 15,600 shares of the common stock of Electric Shareholdings owned by Williams, and maintained by him in the names of Onondaga and New Empire, without any consideration therefor and said persons above named in this paragraph in violation of their fiduciary obligations, duties and trusts then and there secretly entered into a corrupt and unlawful agreement and conspiracy with each other to do and cause to be done and to accomplish and to cause to be accomplished the aforesaid illegal, corrupt, and fraudulent objects and purposes.

E-21. Pursuant to said plan and conspiracy, Williams did in fact procure Finney, Johnson, Kilmarx, McCornack, Smith and Andersen, in violation of their duties, trusts and obligations to the Debtor, to agree on behalf of the Debtor with New Empire and Onondaga to exchange 23,400 shares of the common stock of Blue Ridge for 15,600 shares of the [fol. 70] common stock of Electric Shareholdings owned by Williams and maintained by Williams in the names of New Empire and Onondaga and to exclude the Debtor from

the benefits of its contract right as fixed in Exhibit "E" annexed hereto to exchange 594,462 shares of the common stock of Electric Shareholdings owned by the Debtor for 891,648 shares of the common stock of Blue Ridge to the extent of the above described 15,600 shares of the common stock of Electric Shareholdings and said persons named in this paragraph, did in fact corruptly, fraudulently and illegally appropriate a portion of the benefits of said contract between the Debtor and the Tri-Continental interests, Exhibit "E" annexed hereto, to the use of Williams and for Williams' sole benefit, and did in fact permit Williams to take as his own and to receive for his own individual benefit the fruits of said contract, Exhibit "E" annexed hereto, to the extent of 23,400 shares of the common stock of Blue Ridge for 15,600 shares of the common stock of Electric Shareholdings owned by Williams and maintained by him in the names of New Empire and Onondaga.

E-22. The Debtor received no consideration whatsoever, and none of the persons named in paragraph "E-21" of this complaint paid to the Debtor any consideration for said appropriation by Williams of the Debtor's said property and contract right to exchange the shares of the common stock of Electric Shareholdings owned by it for the common stock of Blue Ridge with the Tri-Continental interests in the proportion specified in the agreement, Exhibit "E" annexed hereto.

E-23. Pursuant to and in execution of said plan, agreement and conspiracy, and for the accomplishment thereof, Finney, Johnson, McCornack, Smith, Andersen and Williams did and caused to be done and assisted in the doing [fol. 71] of the acts and things hereinbefore and hereinafter complained of including among others the following, to wit:

(a) On the 18th day of November, 1938, they caused the Debtor to exchange 23,400 shares of the common stock of Blue Ridge for 15,600 shares of the common stock of Electric Shareholdings owned by Williams and maintained by him in the names of New Empire and Onondaga;

(b) On the 21st day of November, 1938, at a meeting of the board of directors of the Debtor at which were present the following directors, to wit: Finney, Johnson, Kilmarx, McCornack and Smith, and the following

officer, namely, Andersen, they caused pretended proceedings to be taken whereby said exchange of stocks with New Empire an Onondaga were ratified and approved;

(c) They caused said acts to be done entirely in the personal interest of Williams;

(d) They caused said acts to be done well knowing that they were entirely contrary to the interests of the Debtor;

(e) They caused said acts to be done and said exchanges to be made in violation of their duties and trusts and obligations to the Debtor;

(f) They cooperated with Williams to cause the Debtor to make said exchanges contrary to the Debtor's own interests;

(g) They refrained and caused the Debtor to refrain from making any effort whatsoever to impede and prevent Williams from carrying out his unlawful, fraudulent and corrupt conspiracy;

(h) They refrained and caused the Debtor to refrain [fol. 72] from taking the full benefit of said contract with the Tri-Continental interests, Exhibit "E" annexed hereto;

(i) They refrained and caused the Debtor to refrain from making appropriate and authorized use of the shares of the common stock of Electric Shareholdings then and there owned by the Debtor and available for exchange for the common stock of Blue Ridge pursuant to the contract, Exhibit "E" annexed hereto to the extent of the 13,600 shares of the common stock of Electric Shareholdings owned by Williams and maintained by him in the names of New Empire and Onondaga;

(j) They refrained and caused the Debtor to refrain from making any effort whatsoever to fulfill the terms of said contract with the Tri-Continental interests by delivering only the shares of the common stock of Electric Shareholdings owned by the Debtor;

(k) They used their positions of trust and responsibility and the powers vested in them by the Debtor to

prevent the Debtor from taking the full benefit of said contract "E" annexed hereto;

(l) They misused the powers entrusted to them by the Debtor and made corrupt, fraudulent and illegal use of their said powers for the purpose of enriching Williams, all in violation of their fiduciary duties, obligations and trusts as officers, directors and fiduciaries of and for the Debtor;

(m) They used their positions of trust and responsibility and the powers vested in them by the Debtor for Williams' own profit to deprive the Debtor of property [fol. 73] and rights lawfully belonging to the Debtor and to deprive the Debtor of profits to which the Debtor alone was lawfully entitled by permitting New Empire and Onondaga to obtain 23,400 shares of the common stock of Blue Ridge for 15,600 shares of the common stock of Electric Shareholdings.

E-25. Williams, New Empire and Onondaga took and received the said 23,400 shares of the common stock of Blue Ridge for 15,600 shares of the common stock of Electric Shareholdings, and held and now hold the said 23,400 shares of the common stock of Blue Ridge and all the profits derived therefrom in trust as the property of the Debtor herein and of plaintiffs as Trustees of said Debtor.

E-26. By reason of the premises, each of the persons named as participating in this transaction has become and now is liable to account to the Debtor and to the plaintiffs as Trustees thereof, as aforesaid, for 23,400 shares of the common stock of Blue Ridge received by Williams, New Empire and Onondaga, as aforesaid.

E-27. No part of the said 23,400 shares of the common stock of Blue Ridge for which each of the persons named as participating in this transaction are accountable and liable as aforesaid has ever been returned to the Debtor or to plaintiffs as Trustees thereof in restitution or restoration or as compensation for the losses and damages caused to the Debtor or plaintiffs, as its Trustees, by their wrongful, corrupt and fraudulent acts as aforesaid.

E-28. The Debtor is entitled to recover from Williams, New Empire and Onondaga the said 23,400 shares of the

common stock of Blue Ridge with all dividends and profits acruing thereon, in restitution and restoration of the losses [fol. 74] and damages caused to it by Williams' wrongful, corrupt and fraudulent acts, and plaintiffs and the Debtor stand ready to return to Williams, New Empire and Onondaga the aforementioned 15,600 shares of the common stock of Electric Shareholdings and to deliver and return to him or them all the dividends and benefits accrued or accruing or incident to the ownership of the above described common stock of Electric Shareholdings, from the 18th day of November, 1938 up to and including the present day.

F-1. Another transaction wherein Williams violated his fiduciary obligations to the Debtor is shown by his dealings with the Debtor with respect to 18,000 shares of the common stock of Detroit Edison Company which the Debtor had a contract right to repurchase from Blue Ridge pursuant to Exhibit "B(2)" annexed to this complaint.

F-2. Pursuant to the above mentioned contract, Exhibit "B(2)" annexed hereto, the Debtor sold 18,000 shares of the common stock of Detroit Edison Company to Blue Ridge on August 21, 1929 at a price of $349. per share, making an aggregate total of $6,282,000.

F-3. Pursuant to the aforementioned contract, Exhibit "B(2)" annexed hereto, the Debtor had a contract right to repurchase said shares at a price of $351. per share.

F-4. Pursuant to the above mentioned contract, Exhibit "B(2)" annexed hereto, the Debtor's right, option or election to repurchase the above mentioned 18,000 shares of the common stock of Detroit Edison Company could be exercised by the Debtor during the 30 day period next succeeding September 5, 1929.

[fol. 75] F-5. On the 24th day of September, 1929, the common stock of the Detroit Edison Company was selling in the open market at a price of $376. per share.

F-6. The Debtor could and would have exercised the option contained in the contract made by it as aforesaid with Blue Ridge, Exhibit "B(2)" annexed hereto, to the Debtor's great gain and profit, but for the violations of fiduciary obligations, duties and trusts and the wrongful acts and conduct of Williams, Fogarty, Freeman, Glass,

Kilmarx, Narlian, Schroeder, Stone and Ross as hereinabove and hereinafter set forth.

F-7. Williams, Fogarty, Freeman, Glass, Kilmarx, Narlian, Schroeder, Stone and Ross well knowing the facts and transactions hereinabove set forth and the rights and obligations of the Debtor and the parties in and to the premises planned and determined that in violation of their fiduciary obligations, duties and trusts as fiduciaries, directors, officers and agents of the Debtor, and in violation of the rights of the Debtor, its then existing and subsequently created stockholders, creditors and debentureholders, they would so proceed as to prevent the Debtor from exercising the above described option to the extent of 18,000 shares of the capital stock of Detroit Edison Company and to exclude the Debtor therefrom without any consideration therefor; and said persons above named in this paragraph in violation of their fiduciary obligations, duties and trusts then and there secretly entered into a corrupt, fraudulent and illegal agreement and conspiracy with each other to do and cause to be done and to accomplish and to cause to be accomplished the aforesaid corrupt, fraudulent, and illegal objects and purposes.

[fol. 76] F-8. Pursuant to said plan, agreement and conspiracy, Williams did in fact wrongfully, fraudulently and illegally procure Fogarty, Freeman, Glass, Kilmarx, Narlian, Schroeder, Stone and Ross in violation of their duties, trusts and obligations to the Debtor, to refuse on behalf of the Debtor to exercise its option and contract right to repurchase the above described 18,000 shares of the common stock of Detroit Edison Company and to exclude the Debtor from its contract right as fixed in Exhibit "B(2)" annexed hereto, to repurchase such shares of the common stock of Detroit Edison Company at a price of $351. per share and to prevent the Debtor from selling said shares on the open market at the enhanced and increased market price of $376. per share; and said persons named in this paragraph did in fact negligently, wilfully and corruptly fail to take advantage of the contract right which the Debtor had pursuant to said contract, Exhibit "B(2)" annexed hereto, to the extent of 18,000 shares of the common stock of Detroit Edison Company to the Debtor's loss of $450,000.00.

F-9. The Debtor received no valuable consideration nor any consideration of any value whatsoever and none of the

persons named in paragraph "F-6" of this complaint paid to the Debtor any consideration at all for said negligent, wilful, corrupt and wasteful failure to exercise the Debtor's contract right to purchase the above mentioned 18,000 shares of the common stock of Detroit Edison Company pursuant to the contract, Exhibit "B(2)" annexed hereto.

F-10. Pursuant to and in execution of said plan, agreement and conspiracy, and for the accomplishment thereof, Williams, Fogarty, Freeman, Glass, Kilmarx, Narlian, Schroeder, Stone and Ross did and caused to be done and assisted in the doing of the acts and things hereinbefore [fol. 77] and hereinafter complained of including among others the following to wit:

(a) They refrained and caused the Debtor to refrain from exercising the Debtor's contract right, option and election to repurchase 18,000 shares of the common stock of Detroit Edison Company at $351. per share and from selling said shares at the increased market price of $376. per share, as the Debtor had the right under and pursuant to the aforementioned contract with Blue Ridge, Exhibit "B(2)" annexed hereto;

(b) They refrained and caused the Debtor to refrain from making any effort whatsoever to fulfill the terms of said contract with Blue Ridge by repurchasing from Blue Ridge 18,000 shares of the common stock of Detroit Edison Company;

(c) They used their positions of trust and responsibility and the powers vested in them by the Debtor to prevent the Debtor from repurchasing 18,000 shares of the common stock of Detroit Edison Company pursuant to the terms and conditions of the contract with Blue Ridge, Exhibit "B(2)" annexed hereto;

(d) They misused the powers entrusted to them by the Debtor and made corrupt, fraudulent, negligent and wasteful use of their powers for the sole purpose of accomplishing the purposes, wishes and desires of Williams, all in violation of their fiduciary duties, obligations and trusts as officers, directors, managers, agents and fiduciaries of and for the Debtor.

F-11. By reason of said defendants' wasteful and negligent acts as above described, the Debtor suffered a loss amounting to the sum of $450,000.00.

[fol. 78] F-12. By reason of the premises each of the persons named as participants herein has become and is now liable to account to the Debtor and to plaintiffs as Trustees thereof as aforesaid, for the sum of $450,000.00.

F-13. No part of the said $450,000.00 for which defendants are liable and accountable as aforesaid has ever been paid or returned to the Debtor or to plaintiffs as Trustees thereof in restitution and restoration, or as compensation for the losses and damages caused to the Debtor or to plaintiffs as its Trustees by the negligent, corrupt and wasteful acts of said defendants as aforesaid.

G-1. Another transaction wherein Williams violated his fiduciary obligations to the Debtor is shown by his dealings with the Debtor with respect to the shares of Commercial Investment Trust and Stone & Webster stock which the Debtor sold to Blue Ridge, pursuant to Exhibit "B(2)" annexed to this complaint.

G-2. Pursuant to the above mentioned contract, Exhibit "B(2)" annexed hereto, the Debtor sold 29,200 shares of the stock of Commercial Investment Trust and 7,900 shares of the stock of Stone & Webster to Blue Ridge on August 21, 1929, at the following prices and amounts:

29,200 shs.	Commercial Invest. Trust	@ 185 —	$5,402,000.
7,900 "	Stone & Webster	@ 160 —	1,311,400.
			$6,713,400.

G-3. At the time that the Debtor entered into the above mentioned contract, Exhibit "B(2)" annexed hereto, the Debtor did not own the shares of stock of Commercial Investment Trust and Stone & Webster mentioned in paragraph "G-2" hereinabove.

[fol. 79] G-4. At the time the Debtor entered into the contract with Blue Ridge, Exhibit "B(2)" annexed hereto, no provision was made to protect the Debtor against a rise in the market price of the shares of Commercial Investment Trust and Stone & Webster, more particularly mentioned and described in paragraph "G-2" of this complaint.

G-5. At the time the Debtor entered into the contract, Exhibit "B(2)" annexed hereto, Williams, Fogarty, Free-

man, Glass, Kilmarx, Narlian, Schroeder, Stone and Ross, wrongfully, negligently and illegally failed to protect the Debtor against a rise in the market price of said stocks.

G-6. Pursuant to the above mentioned contract, Exhibit "B(2)" annexed hereto, and on the 5th day of September, 1929, the Debtor delivered to Blue Ridge the shares of stock set forth and described in paragraph "G-2" herein at the prices and in the amounts mentioned in paragraph "G-2" of this complaint.

G-7. In order to fulfill its obligations under the above mentioned contract, Exhibit "B(2)" annexed hereto, and on the 5th day of September, 1929, the Debtor purchased the shares of stock set forth and described in paragraph "G-2" of this complaint at the following prices and amounts:

29,200 shs. Commercial Invest. Trust	@ 207 —	$6,044,400.
7,900 shs. Stone & Webster	@ 198 —	1,564,200.
		$7,608,600.

G-8. The failure of Williams, Fogarty, Freeman, Glass, Kilmarx, Narlian, Schroeder, Stone and Ross to make provision on the 21st day of August, 1929 for the purchase of the shares of stock of Commercial Investment Trust and Stone & Webster at or about the prices at which the said [fol. 80] shares of stock were sold in the contract, Exhibit "B(2)" annexed hereto, was wrongful, negligent and illegal and resulted in a loss to the Debtor of $895,200.

G-9. The Debtor could and would have been able to protect itself against a rise in the market price of the stock of Commercial Investment Trust and Stone & Webster to the Debtor's great gain and profit, but for the violations of fiduciary obligations, duties and trusts and the negligent, wrongful and illegal acts and conduct of Williams, Fogarty, Freeman, Glass, Kilmarx, Narlian, Schroeder, Stone and Ross, as hereinabove set forth.

G-10. By reason of said wasteful and negligent acts as above described of Williams, Fogarty, Freeman, Glass, Kilmarx, Narlian, Schroeder, Stone and Ross, the Debtor suffered a loss amounting to the sum of $895,200, and said

persons named in this paragraph have become and are now liable to account to the Debtor and to plaintiffs as Trustees thereof for said sum of $895,200.

G-11. No part of the said $895,200 for which the persons above named in paragraph "G-5" of this complaint are liable and accountable as aforesaid has ever been paid or returned to the Debtor or to plaintiffs as Trustees thereof in restitution or restoration or as compensation for the losses and damages caused to the Debtor or to plaintiffs as its Trustees by the negligent, wasteful, wrongful and illegal acts of said persons as aforesaid.

H-1. Another transaction wherein Williams violated his fiduciary obligations to the Debtor is shown by his dealings with the Debtor with respect to 2,175 shares of the 7% preferred stock of the Debtor, which Williams caused the Debtor to repurchase from two corporations wholly owned by him.

[fol. 81] H-2. Prior to December 31, 1928, the Debtor had authorized, issued and outstanding 75,433 shares of its own 7% preferred stock.

H-3. On December 31, 1928, there were outstanding as obligations of the Debtor in excess of $19,000,000 of its 5% debenture bonds issued on January 1, 1928.

H-4. The Debtor has continued to be and is still obligated and indebted on the above described 5% debenture bonds issued on January 1, 1928, to the extent of $6,300,000 with accrued interest from January 1, 1942.

H-5. At all the dates and times mentioned herein, Williams had full and complete knowledge of the Debtor's financial condition and of the Debtor's obligations to its debentureholders as above set forth.

H-6. On December 31, 1928, Williams caused New Empire and Electric Investment Corporations, his wholly owned corporate instrumentalities, to sell to the Debtor 1,020 and 1,695 shares of the Debtor's 7% preferred stock, respectively, at a total cost to the Debtor of $309,510.

H-7. On December 31, 1928, Williams caused the Debtor to purchase from New Empire and Electric Investment Corporations, his wholly owned corporate instrumentalities,

1,020 and 1,695 shares of the Debtor's own 7% preferred stock respectively, at a cost to the Debtor of $309,510.

II-8. Said sales by New Empire and Electric Investment Corporations caused to be made by Williams for his own benefit to the Debtor were improper, illegal and detrimental to the Debtor's best interests.

II-9. Williams was benefitted and enriched as the result [fol. 82] of the above described unlawful sales of the Debtor's own preferred stock to the Debtor, to the extent of $309,510.

II-10. No part of the said $309,510 has ever been paid or returned to the Debtor or to plaintiffs, as Trustees thereof, in restitution or restoration or as compensation for the losses and damages caused to the Debtor, its stockholders, creditors and debentureholders or plaintiffs as its Trustees, by reason of the above mentioned illegal sales.

II-11. By reason of the aforesaid unlawful sales to the Debtor by Williams, New Empire Corporation and Electric Investment Corporation of 2,715 shares of the Debtor's own preferred stock, the Debtor has been damaged in the sum of $309,510 with interest thereon from the 31st day of December, 1928.

II-12. The Debtor is entitled to recover from Williams, New Empire Corporation and Electric Investment Corporation, in restitution and restoration of the losses and damages caused to it by said defendants' wrongful acts, the sum of $309,510 with appropriate interest thereon.

I-1. Another transaction wherein Williams violated his fiduciary obligations to the Debtor is shown by his dealings with respect to the management contract between the Debtor and New Empire Corporation.

I-2. On the 15th day of February, 1923, the Debtor and New Empire entered into an agreement pursuant to which New Empire agreed, for a consideration of $65,000 per annum, to furnish to the Debtor management and services and undertook the supervision of the operation and financing of the Debtor's business. A copy of this agreement is annexed hereto and marked Exhibit "1(1)" and made a part hereof.

[fol. 83] I-3. Thereafter and on October 1, 1924, the Debtor and New Empire modified the above mentioned management contract, Exhibit "I(1)" annexed hereto, by reducing the payments required to be made by the Debtor to the rate of $18,000 per year. A copy of the said agreement of modification is annexed heerto and marked Exhibit "I(2)" and made a part hereof.

I-4. Pursuant to the terms of the above mentioned management contract, Exhibits "I(1)" and "I(2)" annexed hereto, the contract could be terminated at any time by either of the parties thereto, upon thirty days' written notice to the other, and continued in full force and effect until it was so terminated.

I-5. Williams was at all times familiar with and fully cognizant of the rights of the Debtor as embodied in said management contract as modified, Exhibits "I(1)" and "I(2)" annexed hereto.

I-6. During all of said dates and times mentioned herein Williams was fully cognizant of the Debtor's financial condition and its need for ready cash, as more particularly set forth hereinabove in paragraph "A-23" of this complaint.

I-7. Said management contract continued in full force and effect during the months of January, 1929, through September, 1929, inclusive, and the Debtor made the payments required by said contract, Exhibits "I(1)" and "I(2)" annexed hereto.

I-8. During the months of October or November, 1929, the exact date being unknown to plaintiffs, Williams determined to overreach the Debtor and to make an unconscionable profit at its expense. At the time Williams [fol. 84] reached this decision he was a fiduciary of and for the Debtor and fully cognizant of all its requirements, business conditions and the rights of the Debtor under and pursuant to the above mentioned management contract, Exhibits "I(1)" and "I(2)" annexed hereto.

I-9. Despite Williams' duty as a fiduciary of the Debtor not to impair the interests of the Debtor created by and arising out of said management contract, Exhibits "I(1)" and "I(2)" annexed hereto, and in violation of Williams' fiduciary obligations, Williams, Kilmarx, Glass, Schroeder, Fogarty, Freeman, Narfian, Stone and Ross, conspired

together and agreed and formed the deliberate design and purpose to overreach the Debtor to the extent of $102,328.44, to the sole gain and advantage of Williams.

I-10. The divers acts and things done by Williams, Kilmarx, Glass, Schroeder, Fogarty, Freeman, Narlian, Stone and Ross, hereinabove alleged and as more particularly set forth hereinafter, were all steps in this design and conspiracy in which all of the persons named in this paragraph participated and which were all done for the common purpose of enabling Williams to overreach the Debtor and to make an unconscionable profit at the expense of the Debtor to the extent of $102,328.44.

I-11. The Debtor was entitled under and pursuant to the terms of the above mentioned management contract, Exhibits "I(1)" and "I(2)" annexed hereto, to obtain the services specified in said contract during the months of January, 1929, through September, 1929, inclusive, at a cost to it of $13,500, but for the fraudulent acts of Williams in abusing the trust and confidence of the Debtor in taking advantage of the Debtor and in causing it to appear that the said management contract had been terminated as of De- [fol. 85] cember 31, 1928, and thus enabling Williams to overreach the Debtor and to make an unconscionable profit at its expense to the extent of $102,328.44, pursuant to the plan, scheme and conspiracy more particularly set forth herein.

I-12. The Debtor performed all the terms and conditions on its part to be performed by the management contract with New Empire, Exhibits "I(1)" and "I(2)" annexed hereto, and made all the payments required to be made under said management contract and was entitled to be saved from additional expense, more particularly at a time when the Debtor was hard pressed for ready funds, but for the violations of fiduciary obligations, duties and trusts, and the wrongful acts and conduct of Williams, Kilmarx, Glass, Schroeder, Fogarty, Freeman, Narlian, Stone and Ross as hereinabove and hereinafter set forth.

I-13. Williams, Kilmarx, Glass, Schroeder, Fogarty, Freeman, Narlian, Stone and Ross well knowing the facts and transactions hereinbefore set forth, and the rights and obligations of the Debtor and the parties in and to the premises, planned and determined that in violation of their

fiduciary obligations, duties and trusts as fiduciaries, directors, officers and agents of the Debtor and in violation of the rights of the Debtor, its then existing and subsequently created stockholders, creditors and debentureholders, they would so proceed as to enable Williams wrongfully to overreach the Debtor and to enable Williams to take, receive, acquire and retain for himself and for his own benefit an unconscionable profit at the expense of the Debtor to the extent of $102,328.44, and said persons above named in this paragraph, in violation of their fiduciary obligations, duties and trusts, then and there secretly entered into a corrupt, [fol. 86] fraudulent and illegal agreement and conspiracy with each other to do and cause to be done and to accomplish and to cause to be accomplished the aforesaid corrupt, fraudulent and illegal objects and purposes.

I-14. Debtor received no valuable consideration or any consideration or thing of value whatsoever, and none of the persons named in paragraph "I-13" of this complaint paid to the Debtor any consideration at all for said appropriation by Williams of the Debtor's funds and property obtained by Williams through his corporate creature New Empire, at the expense of the Debtor to the extent of $102,328.44.

I-15. Pursuant to and in execution of said corrupt, fraudulent and illegal plan, agreement and conspiracy, and for the accomplishment thereof, Kilmarx, Glass, Schroeder, Fogarty, Freeman, Narlian, Stone, Ross and Williams, did and caused to be done and assisted in the doing of the acts and things hereinbefore and hereinafter complained of, including among others the following, to wit:

(a) Sometime during the months of October and November, 1929, the exact date being now unknown to plaintiffs, they entered into a corrupt, fraudulent and illegal agreement with New Empire to cause the Debtor to pay to New Empire the sum of $86,661.79 and to pay the salary of Stone, as President of the Debtor, for the four months of June, July, August and September, 1929, amounting to the sum of $16,666.65, making a total payment for the benefit of New Empire, and Williams, its sole stockholder, of $102,328.44;

(b) Thereafter and pursuant to said fraudulent, corrupt and illegal agreement, and sometime during [fol. 87] October or November, 1929, they cooperated with Williams so as to cause it to appear that the management contract, Exhibits "I(1)" and "I(2)" annexed hereto, was terminated on December 31, 1928, when in truth the contrary was the fact;

(c) They conspired with Williams to cover up, conceal and hide the real fact, namely, that said management contract was in full force and effect up to and including the end of the month of September, 1929, and instead agreed to act as though said management contract had been terminated at the end of December, 1928;

(d) Accordingly, they directed the officers of the Debtor to pay the salary of Stone, the Debtor's President, for the months of June through September, 1929, and to overpay to New Empire the sum of $85,661.79, acting on the false pretense that said management contract, Exhibits "I(1)" and "I(2)" annexed hereto, had been terminated at the end of December, 1928;

(e) Sometime during the months of October or November, 1929, Williams determined that the management contract, Exhibits "I(1)" and "I(2)" annexed hereto, should be terminated and cancelled. Pursuant to the wishes and demands of Williams and at a meeting of the Board of Directors of the Debtor, held sometime during the months of October and November, 1929, the exact date of which is unknown to plaintiffs, they adopted a resolution based on the assumption that said management contract with New Empire, Exhibits "I(1)" and "I(2)" annexed hereto, had been terminated on December 31, 1928;

[fol. 88] (f) However, it was the purpose of Williams to overreach the Debtor and to make an unconscionable profit at its expense. Accordingly, they caused the books of the Debtor to be altered so as to make it appear that the said management contract, Exhibits "I(1)" and "I(2)" annexed hereto, had been cancelled and terminated at the end of December, 1928, whereas the real fact was that no such termination or cancellation had ever so taken place;

(g) Accordingly, at a meeting of the Executive Committee of the Board of Directors of the Debtor, held sometime during the months of October and November, 1929, the exact date of which is unknown to plaintiffs, Fogarty, Freeman, Kilmarx and Stone, caused pretended proceedings to be taken and pretended minutes to be made purporting to show, first, that the meeting was held on the 8th day of October, 1929, when in truth and in fact it was never held on that day, insofar as the proceedings with respect to the management contract, Exhibits "I(1)" and "I(2)" annexed hereto, were concerned and, secondly, they caused false, fraudulent and improper minutes to be made purporting to show that the said management contract with New Empire, Exhibits "I(1)" and "I(2)", annexed hereto, had actually been terminated prior to January 1, 1929, when in truth and in fact the said management contract had never been so terminated;

(h) They used their positions of trust and responsibility and the powers vested in them by the Debtor to prevent the Debtor from insisting on the fulfillment of the terms and conditions of said management con- [fol. 89] tract, Exhibits "I(1)" and "I(2)" annexed hereto;

(i) They misused the powers entrusted to them by the Debtor and made illegal, corrupt and fraudulent use of their powers for the sole purpose of corruptly enriching Williams and New Empire, his wholly owned corporate creature, all in violation of their fiduciary duties, obligations and trusts as officers, directors, managers, agents and fiduciaries of and for the Debtor;

(j) They used their positions of trust and responsibility and the powers vested in them by the Debtor for Williams' own profit and for the purpose of depriving the Debtor of property and rights lawfully belonging to the Debtor and for the purpose of permitting Williams to overreach the Debtor and make an unconscionable profit at the Debtor's expense, to the extent of $102,328.48.

I-16. Williams and his wholly owned creature, New Empire, have invested and reinvested the said sum of $102,

328.44, and by reason thereof have made and earned large and substantial profits, the exact amounts of which are unknown to plaintiffs at the present time.

I-17. Williams took and received for his own individual use and benefit the said sum of $102,328.44 obtained by New Empire through the overreaching of the Debtor, as more particularly explained hereinabove, and held and now holds the said $102,328.44 and all the profits derived therefrom in trust as the property of the Debtor herein and of plaintiffs, as Trustees of the Debtor.

I-18. By reason of the premises each of the persons named herein as participants has become and is now liable [fol. 90] to account to the Debtor and to plaintiffs as Trustees thereof, as aforesaid, for the sum of $102,328.44, received by Williams and his wholly owned creature, New Empire, through the overreaching of the Debtor as more particularly described hereinabove.

I-19. No part of the said sum of $102,328.44 for which said persons are liable and accountable, as aforesaid, has ever been paid or returned to the Debtor or to plaintiffs as Trustees thereof, in restitution or restoration, or as compensation for the losses and damages caused to the Debtor, or to plaintiffs as its Trustees, by the corrupt, fraudulent and illegal acts of said defendants as aforesaid.

J-1. Another transaction wherein Williams violated his fiduciary obligations to the Debtor is shown by his dealings with respect to 375,000 shares of the preferred stock of Shenandoah which Williams caused the Debtor to sell to Shenandoah, now to be related by plaintiffs.

J-2. Shenandoah suffered large losses by reason of the depreciation after October 29, 1929, in the market value of securities owned by it. By the early part of December, 1929, the surplus of Shenandoah was decreased by an amount in excess of $37,000,000 as a result of said depreciation in the market values of securities owned by Shenandoah.

J-3. In or about the month of December, 1929, Williams conceived the idea of restoring the depreciated surplus of Shenandoah at the expense of the Debtor.

J-4. At the time Williams came to this determination, he was the majority stockholder of the Debtor and had assumed

all the duties, responsibilities and liabilities of a managing [fol. 91] fiduciary of and for the Debtor; at the same time, he was a director of Shenandoah and acted throughout the consummation of the plan about to be related as the agent of Shenandoah and the Debtor.

J-5. The essence of the plan whereby Williams determined to restore the depreciated surplus of Shenandoah at the expense of the Debtor lay in the sale by the Debtor to Shenandoah of 375,000 shares of the preferred stock of Shenandoah at a price which was only one-half of its real intrinsic value.

J-6. At the time that Williams decided to effect this plan, the Debtor was the owner of 375,000 shares of the preferred stock of Shenandoah. Said stock had a par value of $50. per share which was fully covered by the assets of Shenandoah.

J-7. Shenandoah owned, during the dates and times herein involved, 234,375 shares of the common stock of Goldman Sachs Trading Corporation, which had a market value of $9,375,000 on December 4, 1929.

J-8. The plan of Williams was to cause the Debtor to sell its 375,000 shares of the preferred stock of Shenandoah to Shenandoah in return for 234,375 shares of the common stock of Goldman Sachs Trading Corporation. It was Williams' plan to cause Shenandoah's surplus which had theretofore depreciated because of the decrease in the market value of its securities, as above mentioned, to be restored in the amount of $9,375,000 at the expense of the Debtor by reason of the exchange of the Debtor's 375,000 shares of the preferred stock of Shenandoah which was worth at that time at least $18,750,000 for the 234,375 shares of the common stock of Goldman Sachs Trading Corporation which was worth $9,375,000.

[fol. 92] J-9. Pursuant to Williams' plan as above outlined the Debtor and Shenandoah agreed on December 4, 1929, to exchange the 375,000 shares of the preferred stock of Shenandoah owned by the Debtor for the 234,375 shares of the common stock of Goldman Sachs Trading Corporation owned by Shenandoah.

J-10. On the 4th day of December, 1929, Williams caused the Boards of Directors of the Debtor and Shenandoah to ratify and approve the said exchange of securities.

J-11. Williams knew, at the time that he caused the Debtor and Shenandoah to execute the above-described exchange of securities, that the 375,000 shares of preferred stock of Shenandoah owned by the Debtor had an intrinsic value of at least $50. per share amounting in total to the sum of $18,750,000.

J-12. Williams was at all times familiar with and fully cognizant of the Debtor's obligations then existing to its creditors, debentureholders and stockholders, and was fully cognizant of the Debtor's financial condition and its need for ready cash, as more particularly set forth hereinabove in paragraph "A-23" of this complaint.

J-13. By reason of the facts set forth hereinabove, it was the duty of Williams to further the interests of the Debtor and to refrain from causing it to make the above-described exchange at a loss to the Debtor of $9,375,000.

J-14. Despite Williams' duty as a fiduciary of the Debtor, Williams, Kilmarx, Glass, Fogarty, Freeman, Narlian, Schroeder, Stone and Ross conspired together and agreed and formed the deliberate design and purpose to make the above-described exchange of securities, to the sole gain [fol. 93] and advantage of Shenandoah and to the Debtor's loss in the sum of $9,375,000.

J-15. The divers acts and things done by Williams, Kilmarx, Glass, Fogarty, Freeman, Narlian, Schroeder, Stone and Ross as hereinabove alleged and as more particularly set forth hereinafter, were all steps in this design and conspiracy in which all of the persons named in this paragraph participated and which were all done for the common purpose of causing a loss to the Debtor and an equivalent gain to Shenandoah amounting to the sum of $9,375,000, and thus to enable Shenandoah to restore its depreciated surplus by the amount of $9,375,000. Debtor would have been spared the amount of said loss but for the fraudulent acts of Williams, Kilmarx, Glass, Fogarty, Freeman, Narlian, Schroeder, Stone and Ross in abusing the trust and confidence of the Debtor in taking advantage of the Debtor and in causing the Debtor to exchange 375,000 shares of the preferred stock

of Shenandoah for 234,375 shares of the common stock of Goldman Sachs Trading Corporation at a price which was grossly unfair to the Debtor.

J-16. Debtor would have been spared the said loss in the amount of $9,375,000 but for the violations of fiduciary obligations, duties and trusts and the wrongful acts and conduct of Williams in overreaching the Debtor and in causing it to make the above-described unconscionable exchange of securities.

J-17. Williams, Kilmarx, Glass, Fogarty, Freeman, Narlian, Schroeder, Stone and Ross, well-knowing the facts and transactions hereinbefore set forth and the rights and obligations of the Debtor, and being particularly aware of the fact that the Debtor already suffered grievous harm at the [fol. 94] expense of Williams, planned and determined that in violation of their fiduciary obligations, duties and trusts as fiduciaries, directors, officers and agents of the Debtor, its then existing and subsequently created stockholders, creditors and debentureholders, they would so proceed as to enable Williams wrongfully to consummate his unconscionable plan, scheme and agreement to the Debtor's harm and for the benefit of Shenandoah and for the accomplishment of Williams' wrongful and corrupt purposes, and said persons above-named in this paragraph, in violation of their fiduciary obligations, duties and trusts, then and there secretly entered into a wrongful, corrupt and fraudulent agreement and conspiracy with each other to do and cause to be done and to accomplish and to cause to be accomplished the aforesaid wrongful, corrupt and fraudulent objects and purposes, and Williams, Stone, Catchings, Weinberg and Dulles became parties to and acted in said plan, agreement and conspiracy as herein set forth, and the acts and things in this complaint complained of were done by said persons named in this paragraph in aid and in execution of said plan, agreement and conspiracy and said corrupt, fraudulent and illegal objects and purposes.

J-18. Pursuant to said corrupt, fraudulent and illegal plan, agreement and conspiracy, Williams did in fact procure Kilmarx, Glass, Fogarty, Freeman, Narlian, Schroeder, Stone and Ross, in violation of their duties, trusts and obligations to the Debtor, to agree on behalf of the Debtor with Shenandoah to exchange 375,000 shares of the pre-

ferred stock of Shenandoah owned by the Debtor for 234,375 shares of the common stock of Goldman Sachs Trading Corporation owned by Shenandoah, to the Debtor's harm and loss of $9,375,000, and the equivalent benefit thereof to Shenandoah, and said persons named in this paragraph [fol. 95] did in fact corruptly, fraudulently and illegally cause said exchange of securities to be effectuated in the consummation of Williams' fraudulent and corrupt purposes, and did in fact permit Williams to effectuate such purposes at the expense of the Debtor and for the sole benefit of Shenandoah in the amount of $9,375,000.

J-19. The Debtor received no valuable consideration nor any consideration or thing of value whatsoever and none of the persons named in paragraph "J-17" of this complaint paid to the Debtor any consideration at all for said appropriation by Williams of Debtor's said property to the extent of $9,375,000 to Shenandoah.

J-20. Pursuant to and in execution of said corrupt, fraudulent and illegal plan, agreement and conspiracy, and for the accomplishment thereof, Kilmarx, Glass, Fogarty, Freeman, Narlian, Schroeder, Stone, Ross and Williams did and caused to be done and assisted in the doing of the acts and things hereinbefore and hereinafter complained of, including among others the following, to wit:

(a) On December 4, 1929, they entered into a corrupt, fraudulent and illegal agreement with Shenandoah to exchange 375,000 shares of the preferred stock of Shenandoah owned by the Debtor for 234,375 shares of the common stock of Goldman Sachs Trading Corporation owned by Shenandoah;

(b) Thereafter and pursuant to said fraudulent, corrupt and illegal agreement and conspiracy, and on the 6th day of December, 1929, they caused the Debtor to deliver 375,000 shares of the preferred stock of Shenandoah to Shenandoah and to receive therefor from Shenandoah 234,375 shares of the common stock of Goldman Sachs Trading Corporation;

[fol. 96] (c) They misused the powers entrusted to them by the Debtor and made illegal, corrupt and fraudulent use of their powers for the sole purpose of corruptly effectuating the purposes of Williams and

to enrich Shenandoah in the amount of $9,375,000, all in violation of their fiduciary duties, obligations and trusts as officers, directors, managers, agents and fiduciaries of and for the Debtor;

(d) They used their positions of trust and responsibility and the powers vested in them by the Debtor for the purpose of enabling Williams to overreach the Debtor and to permit Shenandoah to make an unconscionable profit at the expense of the Debtor in the amount of $9,375,000;

(e) They made no effort to interfere with Williams' corrupt, fraudulent and wrongful plan and conspiracy to cause the Debtor the above-mentioned loss of $9,375,000;

(f) They actively assisted Williams in the effectuation of his corrupt and fraudulent plan and purposes.

J-21. Pursuant to and in execution of said corrupt, fraudulent and illegal plan, agreement and conspiracy and for the accomplishment thereof, Catchings, Weinberg, Stone, Williams and Dulles, with full knowledge that Williams was acting contrary to the interests of the Debtor and was overreaching the Debtor and permitting Shenandoah to make an unconscionable profit at the Debtor's expense in the amount of $9,375,000, assisted Williams in the doing of the acts and things hereinbefore and hereinafter complained of, including among others the following, to wit:

(a) On the 4th day of December, 1929, they caused Shenandoah to execute an agreement with the intent [fol. 97] and for the purpose of permitting Williams to overreach the Debtor in the amount of $9,375,000 for the sole purpose of enriching Shenandoah in that amount;

(b) They caused Shenandoah to deliver 234,375 shares of the common stock of Goldman Sachs Trading Corporation to the Debtor in exchange for 375,000 shares of the preferred stock of Shenandoah owned by the Debtor when in fact they knew or should have known or were put on inquiry of facts which should have caused them to believe and to know that said exchange would result in the perpetration and effectua-

tion of a fraud on the Debtor, and would cause it loss in the amount of $9,375,000;

(c) They made no effort to interfere with Williams' corrupt, fraudulent, and illegal plan and conspiracy to cause the Debtor said loss of $9,375,000;

(d) Knowing that Williams was violating his fiduciary obligations to the Debtor, they nevertheless participated in said violations and assisted Williams in carrying out his unlawful plan, corrupt agreement and conspiracy, by permitting the above described exchange of securities to the Debtor's loss of $9,375,000 and the equivalent gain to Shenandoah;

(e) They caused the above described exchange of securities to be effectuated when in fact they knew or should have known, or were put on inquiry of the facts which should have caused them to believe and to know that said exchange was made solely in the interests of a corrupt plan then being worked out by Williams;

(f) They knew that the purported exchange of securities above described made between Shenandoah [fol. 98] and the Debtor was a sham, a fraud and a device whereby Williams accomplished his corrupt plan and unlawful conspiracy to cause a loss to the Debtor in the amount of $9,375,000, and a benefit to Shenandoah in an equivalent amount.

J-22. By reason of the premises each of the persons named as participants in this transaction has become and is now liable to account to the Debtor and to plaintiffs as Trustees thereof as aforesaid for the sum of $9,375,000.

J-23. No part of said $9,375,000 for which each of the persons named as participants herein is liable and accountable as aforesaid has ever been paid or returned to the Debtor or to plaintiffs as Trustees thereof in restitution or restoration or as compensation for the losses and damages caused to the Debtor or to plaintiffs as its Trustees by the corrupt, fraudulent, and illegal acts as aforesaid.

K-1. Another transaction wherein Williams violated his fiduciary obligations to the Debtor is shown by dealings which he caused the Debtor to undertake with respect to

Ashland Securities Corporation (hereinafter referred to as "Ashland") now to be related by plaintiffs.

K-2. In March, 1922, the Debtor was the owner and holder of 72,934 shares of the common stock of Cleveland Electric Illuminating Co., and was entitled to subscribe to 36,467 additional shares for $100. per share.

K-3. Prior to March 24, 1922, Williams was chairman of the board of the Debtor and chairman of the board of North American Company.

K-4. At all the dates and times mentioned herein and more particularly during the months of March and April, 1922, Dillon Read & Company (hereinafter referred to as [fol. 99] "Dillon Read") was a copartnership doing business as bankers and dealers in securities, and maintained an office in the City, County and State of New York.

K-5. Prior to March 24, 1922, defendant Clarence F. Dillon (hereinafter referred to as "Dillon"), was a director of North American Company and a partner in the firm of Dillon Read & Company.

K-6. North American Company was anxious to obtain and purchase the 72,934 shares of Cleveland Electric stock owned by the Debtor and the 34,467 additional shares of Cleveland Electric stock which the Debtor was entitled to obtain by the exercise of the subscription rights more particularly described in paragraph "K-2" above.

K-7. In or about the month of March, 1922, Williams and Dillon conceived the idea of forming a corporation for the purpose of purchasing the Cleveland Electric Illuminating stock from the Debtor and selling the said stock to North American Company at a profit. Accordingly, they worked out the following plan:

(a) Dillon Read caused to be organized Ashland, the capital stock of which was entirely owned by Eastern Corporation, the capital stock of which in turn was entirely owned by the members of the firm of Dillon Read and their families;

(b) Ashland induced North American Company to organize a subsidiary to be known as North American Edison Company for the purpose of purchasing from Ashland the Cleveland Electric Illuminating stock after

Ashland had acquired the said stock from the Debtor. A copy of Ashland's offer to North American Company is annexed hereto and marked Exhibit "K(1)";

[fol. 100] (c) Thereafter and upon the organization of North American Edison Company, Ashland simultaneously offered to purchase 109,401 shares of the common stock of Cleveland Electric Illuminating Company owned and to be acquired by the Debtor, at a price of $10,810,200 in cash and $3,000,000 par amount of preferred stock of North American Company, and to sell the same shares to North American Edison Company at a price of $11,540,000 in cash, together with $3,000,000 par amount of preferred stock of North American Company. The offering letters from Ashland to North American Edison and to the Debtor are annexed hereto and marked Exhibits "K(2)" and "K(3)";

(d) In order to place North American Edison Company in funds necessary to finance the purchase of the Cleveland Electric Illuminating Company stock from the Debtor, Ashland offered to buy from North American Edison Company $14,000,000 face amount of the bonds of North American Company, for the sum of $12,049,000;

(e) Dillon, Read sold the bonds by North American Edison Company to the public and realized thereon a gross profit of $910,000;

(f) As a result of the purchase by Ashland of the Debtor's Cleveland Electric Illuminating stock and Ashland's simultaneous sale of said stock to North American Edison Company, Ashland realized a profit of $729,800.

K-8. Williams acted as the agent of the Debtor in connection with the making of the arrangements for the sale of the Debtor's Cleveland Electric Illuminating stock to Ashland.

[fol. 101] K-9. Williams and Dillon knew at the time of the execution of the aforedescribed plan and transaction that the Debtor was fully able to sell and deliver the Cleveland Electric Illuminating Company stock which it owned and

which it was about to acquire to North American Company or any subsidiary thereof, and that the Debtor could do so directly without the intervention of Ashland.

K-10. During all said dates and times Williams and Dillon were fiduciaries of and for the Debtor.

K-11. Prior to the sale by the Debtor of its Cleveland Electric Illuminating Company stock, Williams determined that he would prevent the Debtor from selling the said stock directly to North American Company, or one of its subsidiaries, and Williams and Dillon determined that they, for their own use and benefit and for the use and benefit of the members of the firm of Dillon Read, would deprive the Debtor of the benefit of such sale to the extent of $729,800.

K-12. By reason of the facts set forth hereinabove, it was the duty of Williams and Dillon to further the interests of the Debtor and to refrain from interfering with its right to sell its Cleveland Electric Illuminating Company stock directly to North American Company or one of North American Company's subsidiaries.

K-13. Despite the duty of Williams and Dillon, as fiduciaries of the Debtor, to further the interests of the Debtor and in violation of their fiduciary obligation, they conspired together and agreed and formed the deliberate design and purpose to overreach the Debtor and to enable Ashland to make an unconscionable profit at its expense to the extent of $729,800.

[fol. 102] K-14. The divers acts and things done by Williams and Dillon as hereinabove alleged and as more particularly set forth hereinafter, were all steps in this design and conspiracy in which they participated, and which were all done for the common purpose of depriving the Debtor of the full benefit of the purchase price paid by North American Edison Company for the Cleveland Electric Illuminating Company stock sold by the Debtor, and to enable Williams and Dillon, through Ashland, to overreach the Debtor and to make a profit at its expense amounting to the sum of $729,800.

K-15. The Debtor would have been able to realize the additional sum of $729,800 in cash from the sale of the

above-mentioned Cleveland Electric Illuminating stock but for the fraudulent acts of Williams and Dillon in abusing the trust and confidence of the Debtor in taking advantage of the Debtor and in causing the said shares of Cleveland Electric Illuminating Company stock to be sold to Ashland instead of directly to North American Edison Company, thereby enabling Ashland to make an unconscionable profit at the expense of the Debtor in the sum of $729,800.

K-16. The Debtor could and would have been able to sell the stock of Cleveland Electric Illuminating Company which it owned and was about to acquire directly to American Edison Company, to the Debtor's additional gain and profit of $729,800, more particularly at a time when the Debtor was pressed for funds to meet its maturing obligations, but for the violations of the fiduciary obligations, duties and trusts and the wrongful acts of Williams and Dillon, as hereinabove and hereinafter set forth.

[fol. 103] K-17. Williams and Dillon, well knowing the facts and transactions hereinbefore set forth and the rights and obligations of the Debtor and the parties in and to the premises, planned and determined that in violation of their fiduciary obligations, duties and trusts to the Debtor and in violation of the rights of the Debtor, its then existing and subsequently created stockholders, creditors and debentureholders, that they would so proceed as to enable their creature, Ashland, wrongfully to appropriate to its own use and benefit a profit of $729,800 made at the expense of the Debtor and to exclude the Debtor from the right to obtain said profit, and said defendants above named in this paragraph, in violation of their fiduciary obligations, duties and trusts, then and there secretly entered into a corrupt, fraudulent and illegal agreement and conspiracy with each other to do and cause to be done and to accomplish and to cause to be accomplished the aforesaid corrupt, fraudulent and illegal objects and purposes.

K-18. Pursuant to said plan, agreement and conspiracy, Williams and Dillon did in fact fraudulently, corruptly and illegally cause their creature, Ashland, to be interposed between the Debtor, as the seller, and North

American Edison Company, as the buyer, for the sole purpose of making an unconscionable profit at the expense of the Debtor in the amount of $729,800.

K-19. Pursuant to and in execution of the said plan, agreement and conspiracy, and for the accomplishment thereof, Williams and Dillon did and caused to be done and assisted in the doing of the acts and things hereinbefore and hereinafter complained of, including among others the following, to wit:

(a) Sometime during the early part of the year 1922 they caused Ashland to be organized;

[fol. 104] (b) They caused Ashland to make an offer to purchase 109,401 shares of the common stock of Cleveland Electric Illuminating Company owned and to be acquired by the Debtor from the Debtor, at a price of $10,810,200 in cash together with $3,000,000 par amount of North American preferred stock;

(c) Simultaneously, they caused Ashland to make an offer to sell to North American Edison Company the said 109,401 shares of the common stock of Cleveland Electric Illuminating Company for the sum of $11,540,000 in cash together with $3,000,000 par amount of North American preferred stock;

(d) They prevented the Debtor from selling the said 109,401 shares of the common stock of Cleveland Electric Illuminating Company directly to North American Edison Co. for the price described in sub-paragraph "c" above;

(e) They misused their positions of trust for the sole purpose of corruptly enriching the members of the firm of Dillon Read.

K-20. Dillon took and received for his own individual use and benefit a substantial portion of the said sum of $729,800. obtained at the expense of the Debtor by his creature Ashland, and held and now holds the same and all the profits derived therefrom in trust as the property of the Debtor herein and of plaintiffs as Trustees of the Debtor.

K-21. By reason of the premises, Williams and Dillon have become and are now liable to account to the Debtor and to plaintiffs, as Trustees thereof as aforesaid, for [fol. 105] the sum of $729,800 received by Ashland at the expense of the Debtor as aforesaid;

K-22. No part of the said $729,800 for which Williams and Dillon are liable and accountable as aforesaid has ever been paid or returned to the Debtor or to plaintiffs as Trustees thereof in restitution or restoration or as compensation for the losses and damages caused to the said Debtor or to plaintiffs as its Trustees by the corrupt, fraudulent and illegal acts as aforesaid.

L-1. Another transaction wherein Williams violated his fiduciary obligations to the Debtor is shown by his dealings with respect to common stock of North American Company borrowed from the Debtor by Nasco, now to be related by plaintiffs.

L-2. Williams had a personal interest in maintaining the market price of the common stock of North American Company.

L-3. Determined to maintain the price of the common stock of North American Company in which he had a substantial personal interest, Williams caused Nasco to engage in trading operations therein during the years 1926 and 1927.

L-4. In order to enable Nasco to engage in this venture and market operation, Williams caused the Debtor to lend to Nasco 60,000 shares of the common stock of North American Company.

L-5. During the entire time while Nasco was engaged in the above described market operations, Nasco was acting solely and exclusively for the account of and in the personal interest of Williams and not for the account or in the interest of the Debtor.

[fol. 106] L-6. In connection with the above-described market operation and by the end of April, 1927, Nasco sold 80,000 shares of the common stock of North American Company in excess of the amount of such stock which it owned.

L-7. In order to meet its sales commitments made as above set forth, Nasco delivered 40,000 shares of the common stock of North American Company which it had borrowed from the Debtor.

L-8. Williams was unwilling to have Nasco pay to the Debtor the market price for said 40,000 shares of the common stock of North American Company, and accordingly conceived the idea of having it appear that Nasco had been distributing the said 40,000 shares for the account of the Debtor and that to the extent of said 40,000 shares the Debtor had an interest in the venture engaged in by Nasco as above set forth.

L-9. Williams knew at the time of the execution of the above-described plan and transaction that Nasco had not been distributing the said 40,000 shares of the common stock of North American Company for the account of the Debtor.

L-10. During all the said dates and times herein mentioned, Williams was a fiduciary of and for the Debtor.

L-11. By reason of the facts set forth hereinabove, it was the duty of Williams to further the interests of the Debtor and to refrain from interfering with its rights to obtain the full market price for the 40,000 shares of the common stock of North American Company loaned by the Debtor to Nasco, and to refrain from overreaching the Debtor or to permit Nasco to overreach the Debtor and make an unconscionable profit at the Debtor's expense.

[fol. 107] L-12. Despite the duty of Williams as a fiduciary of the Debtor to further the interests of the Debtor and in violation of his fiduciary obligations, Williams, Fogarty, Glass, Kilmarx, Ross and Schroeder, conspired together and agreed and formed the deliberate design and purpose to overreach the Debtor and to permit Williams, through Nasco, his wholly owned corporate instrumentality, to make an unconscionable profit at the Debtor's expense to the extent of the sum of $154,428,80.

L-13. The divers acts and things done by Williams, Fogarty, Glass, Kilmarx, Ross and Schroeder, as hereinabove alleged and as more particularly set forth hereinafter, were all steps in this design and conspiracy in which all of the said persons named in this paragraph participated, and which were all done for the common purpose of depriving the Debtor of the full benefit of the market price of the 40,000 shares of the common stock of North American Company loaned by the Debtor to

Nasco and to enable Williams through Nasco, his wholly owned corporate instrumentality, to overreach the Debtor and make a profit at its expense amounting to the sum of $154,428.80.

L-14. The Debtor would have been able to realize the additional sum of $154,428.80 in cash from the sale of the above-mentioned 40,000 shares of the common stock of North American Company but for the fraudulent acts of Williams, Fogarty, Glass, Kilmarx, Ross and Schroeder in abusing the trust and confidence of the Debtor and in taking advantage of the Debtor by causing it to appear as though the said 40,000 shares of the common stock of North American Company had been distributed by Nasco for the account of the Debtor instead of being sold by the Debtor to Nasco, thereby permitting Williams through Nasco, his wholly owned instrumentality, to overreach the [fol. 108] Debtor and make an unconscionable profit at its expense in the amount of $154,428.80.

L-15. The Debtor could and would have been able to sell the 40,000 shares of the common stock of North American Company which Nasco had borrowed from the Debtor, to the Debtor's additional gain and profit of — least $154,428.80, but for the violations of the fiduciary obligations, duties and trusts and the wrongful acts of Williams, Fogarty, Glass, Kilmarx, Ross and Schroeder, as hereinbefore and hereinafter set forth.

L-16. Williams, Fogarty, Glass, Kilmarx, Ross and Schroeder, well knowing the facts and transactions hereinbefore and hereinafter set forth and the rights and obligations of the Debtor and the parties in and to the premises, planned and determined that in violation of their fiduciary obligations, duties and trusts as fiduciaries, directors, officers and agents of the Debtor and in violation of the rights of the Debtor, its then existing and subsequently created stockholders, creditors and debentureholders, they would so proceed as to enable Williams and his creature, Nasco, wrongfully to overreach the Debtor and to make an unconscionable profit at the Debtor's expense to the extent of $154,428.80, and to exclude the Debtor from the right to obtain said profit, and the persons above named in this paragraph, in violation of their fiduciary obligations, duties and trusts, then and there

secretly entered into a fraudulent, corrupt and illegal agreement and conspiracy with each other to do and cause to be done and to accomplish and to cause to be accomplished the aforesaid fraudulent, corrupt and illegal objects and purposes.

L-17. Pursuant to said plan, agreement and conspiracy, Williams, Fogarty, Glass, Kilmarx, Ross and Schroeder, [fol. 109] did in fact corruptly, fraudulently and illegally permit Williams and Nasco, his wholly owned corporate instrumentality, to overreach the Debtor and to make an unconscionable profit at its expense in the amount of $154,428.80, and the persons named in this paragraph did in fact fraudulently, corruptly and illegally permit Williams and Nasco, his wholly owned corporate instrumentality, to appropriate the unconscionable profit so made to the use of Williams and Nasco.

L-18. Pursuant to and in execution of the said plan, agreement and conspiracy and for the accomplishment thereof, Williams, Fogarty, Glass, Kilmarx, Ross and Schroeder did and caused to be done and assisted in the doing of the acts and things hereinbefore and hereinafter complained of, including among others the following, to wit:

(a) They cooperated with Williams so as to cause it to appear that the venture by Nasco with respect to the market operation in the common stock of North American Company above-described was, to the extent of 40,000 shares, accomplished and done by Nasco as the agent of the Debtor, when in truth the contrary was the fact;

(b) They conspired with Williams to cover up, conceal and hide the real fact, namely, that Nasco had as Williams' own corporate instrumentality and for Williams' own individual account, conducted the market venture and operation in the common stock of North American Company, and instead agreed to act as though Nasco's venture to the extent of 40,000 shares had been conducted for the account of the Debtor;

(c) Accordingly, they directed the officers of the Debtor to make it appear as though the said 40,000 [fol. 110] shares previously loaned to Nasco had actu-

ally been distributed by Nasco for the account of the Debtor, and to act on the false pretense that said shares had not been sold by the Debtor to Nasco;

(d) At a meeting of the Board of Directors of the Debtor held on the 7th day of June, 1927, they caused pretended proceedings to be taken and pretended minutes to be made, purporting to show that Nasco's action in the market operation, in connection with the common stock of North American Company above-described had, to the extent of 40,000 shares, been accomplished and carried out as agent for the Debtor;

(e) Accordingly, said directors at the above-described meeting adopted a purported resolution which was false and fraudulent in fact in the following words and figures, to wit:

"The President reported that the North American Securities Company, through their dealer distribution, had sold during the period to May 21, 1927, in excess of 40,000 shares of the common stock of The North American Company, at an average price of $46.13928 per share, in accordance with statement submitted. The Central States Electric Corporation having advanced stock of The North American Company, also in excess of 40,000 shares since January 21, 1927, against cash deposits, 13,893 shares being from the Company's trading account, and in excess of 26,107 shares from the Company's investment account, and it being necessary to realize on its stock holdings for the Company's corporate purposes, on motion duly made and carried the following resolution was adopted:

[fol. 111] "Resolved, that the Central States Electric Corporation adopt the sale of such 40,000 shares of North American Company common stock, as set forth above, at a net price of $46.13928 per share as its action."

(f) They caused entries to be made on the books of the Debtor so as to show a false condition and one which was not true in fact, namely, that the

market operation conducted by Williams through Nasco had been to the extent of 40,000 shares of the common stock of North American Company accomplished as the agent of and for the account of the Debtor;

(g) They misrepresented to the Debtor's accountants and bookkeepers the true state of facts and affairs for the purpose of inducing said accountants and bookkeepers to make improper entries on the Debtor's books;

(h) By reason of said misrepresentations which they made to the Debtor's accountants and bookkeepers, they caused the accountants and bookkeepers to make entries on the Debtor's books and records which were false, improper and fraudulent, and were designed to conceal the true state of facts;

(i) They made no effort whatsoever and caused the Debtor to refrain from making any effort whatsoever to impede Williams in the carrying out of his unlawful, fraudulent and corrupt conspiracy;

(j) They used their position of trust and responsibility and the powers vested in them by the Debtor to aid and assist Williams in the carrying out of all the details of the above-described fraudulent and corrupt plan;

[fol. 112] (k) They misused the powers entrusted to them by the Debtor and made corrupt, fradulent and illegal use of their said powers for the purpose of corruptly enabling Williams and Nasco to overreach the Debtor and to make an unconscionable profit at its expense to the extent of $154,428.80;

(l) They used their positions of trust and responsibility and the powers vested in them by the Debtor for the benefit of Williams and Nasco, and for the purpose of enabling Williams and Nasco to overreach the Debtor and to make an improper and unconscionable profit at the Debtor's expense, all in violation of their fiduciary duties, obligations and trusts as officers, directors and fiduciaries of and for the Debtor.

L-19. Williams and Nasco were benefited and enriched as the result of the above-described corrupt, fraudulent and illegal plan and conspiracy and the Debtor thereby suffered great loss and harm.

L-20. Williams has invested and reinvested said $154,428.80 and by reason thereof has made and earned large and substantial profits, the exact amounts of which are unknown to plaintiffs at the present time.

L-21. Since the conclusion of the above-described fraudulent plan and corrupt conspiracy, Williams and Nasco have held and now hold the said sum of $154,428.80 and all the profits derived therefrom in trust as the property of the Debtor herein and plaintiffs as said Trustees of the said Debtor.

L-22. No part of the said $154,428.80 for which defendants are accountable and liable as aforesaid, has ever been paid or returned to the Debtor or to plaintiffs as Trustees [fol. 113] thereof, in restitution or restoration, or as compensation for the losses and damages caused to said Debtor or plaintiffs as its Trustees, for the fraudulent, corrupt and illegal acts as aforesaid.

L-23. Debtor is entitled to recover from all the persons who participated in this transaction the sum of $154,428.80 with appropriate interest thereon, and from Williams and Nasco all profits derived therefrom, in restitution and restoration of the losses and damages caused to the Debtor by the above-mentioned corrupt, fraudulent and illegal acts.

M-1. Another transaction wherein Williams violated his fiduciary obligations to the Debtor is shown by his dealings with the Debtor in an attempt to destroy assets of the Debtor, which will now be related by plaintiffs.

M-2. By the end of the year 1929 and by reason of the facts hereinabove set forth, Williams had become indebted and obligated to the Debtor in a sum in excess of $39,000,000, and by the end of the year 1938 Williams had become additionally obligated to the Debtor by reason of the facts set forth in "E-1" to "E-28" of this complaint.

M-3. On and after the accrual of Williams' indebtedness as hereinabove alleged, Williams was at all times fully able to pay the amount thereof to the Debtor.

M-4. After Williams' indebtedness as above alleged had accrued, he determined to avoid and evade the payment and satisfaction of his debts and to destroy assets of the Debtor, and accordingly he embarked upon the plan and course of conduct now to be related.

M-5. At the time Williams came to the decision to evade the payment of his just debts and to destroy assets of the [fol. 114] Debtor, he was a fiduciary of and for the Debtor and its dominant and managing stockholder as more particularly set forth hereinabove.

M-6. Despite Williams' duty as a fiduciary of the Debtor to further the interests of the Debtor and in violation of his fiduciary obligations, Williams, Kilmarx, Ross, Glass, Schroeder, Fogarty, Freeman, Narlian, Stone, Eccles, Sealy, Andersen, Philipp, Finney, Pardee, McCornack, Smith, Johnson and Baker conspired together and agreed and formed the deliberate design, plan and purpose to conceal Williams' obligations to the Debtor, to aid and abet Williams in avoiding and evading payment of his obligations to the Debtor, and to destroy the indebtedness of Williams to the Debtor as an asset of the Debtor by preventing the institution of any suits for the recovery of such assets within the statutory period of limitations, and for such period as to enable Williams to plead defenses of limitations and laches in the event suits were instituted against him.

M-7. The divers acts and things done by Williams, Kilmarx, Ross, Glass, Schroeder, Fogarty, Freeman, Narlian, Stone, Eccles, Sealy, Andersen, Philipp, Finney, Pardee, McCornack, Smith, Johnson and Baker as hereinabove alleged and as more particularly set forth hereinafter were all steps in this design and conspiracy in which all of the persons named in this paragraph participated, and which were all done for the common purpose of aiding and abetting Williams in evading his just obligations and debts to the Debtor, and of enabling Williams to destroy assets of the Debtor.

M-8. Accordingly, Williams, Kilmarx, Ross, Glass, Schroeder, Fogarty, Freeman, Narlian, Stone, Eccles, Sealey, Andersen, Philipp, Finney, Pardee, McCornack, Smith, Johnson and Baker, well knowing the facts and trans-

[fol. 115] actions hereinbefore set forth and the rights and obligations of the parties in and to the premises, planned and determined that in violation of their fiduciary obligations, duties and trusts as fiduciaries, directors, officers and agents of the Debtor, and in violation of the rights of the Debtor, its then existing and subsequently created stockholders, debentureholders and creditors, they would so proceed as to enable Williams fraudulently, corruptly and illegally to evade and avoid his just obligations to the Debtor and to destroy assets of the Debtor, all for Williams' own benefit and to the Debtor's consequent harm and loss, and to cause the Debtor to abstain and refrain from instituting any suits against Williams to enforce his just obligations, and said persons above-named in this paragraph, in violation of their fiduciary obligations, duties and trusts, secretly entered into a corrupt, fraudulent and illegal agreement and conspiracy with each other to do and to cause to be done and to accomplish and cause to be accomplished the aforesaid fraudulent, corrupt and illegal objects and purposes, and Williams, Kilmarx, Ross, Glass, Schroeder, Fogarty, Freeman, Narlian, Stone, Eccles, Sealy Anderson, Philipp, Finney, Pardee, McCornack, Smith, Johnson and Baker became parties to and acted in said plan, agreement and conspiracy during all the dates and times mentioned herein as set forth herein, and the acts and things herein complained of were done by the said persons above-named in this paragraph in aid and in execution of said plan, agreement and conspiracy and for the accomplishment thereof, and said persons above-named did and caused to be done and assisted in the doing of the acts and things hereinbefore and hereinafter complained of, including among others the following, to wit:

(a) During all the dates and times mentioned herein and up to the 23rd day of February, 1942, they co-operated with Williams by causing the Debtor to re-
[fol. 116] frain from making any attempt to enforce Williams' just obligations through legal process;

(b) During all the dates and times mentioned herein and up to the 23rd day of February, 1942, they connived and conspired with Williams to prevent stockholders or other parties or persons in interest from acquiring any knowledge of Williams' wrongdoing

and of the existence of the aforedescribed indebtedness from Williams to Debtor;

(c) During all the dates and times mentioned herein and up to the 23rd day of February, 1942, they conspired and connived with Williams to cover up, conceal and hide the real facts which had occurred, namely, that Williams was obligated and indebted to the Debtor by reason of the various transactions set forth hereinabove, and so acted as to make it appear that Williams was not obligated to Debtor in any way whatsoever;

(d) Accordingly, they directed the officers of the Debtor to refrain from instituting any suits against Williams;

(e) They caused pretended proceedings to be taken purporting to show that they had examined into one of the causes of action possessed by the Debtor against Williams, and had made an independent decision that there was no claim when in truth and in fact the entire action was a sham and a pretense taken in connivance with Williams and in his interest and pursuant to his instructions and for the sole purpose of concealing and hiding the real facts and of exculpating Williams;

(f) In an endeavor to prevent the control of the [fol. 117] Debtor from falling into the hands of debentureholders of the Debtor or other parties not known to or controlled by Williams, they caused the Debtor to pay interest on the debenture obligations of the Debtor at various times during the years 1931 to 1941 inclusive out of capital of the Debtor;

(g) They caused said payment of interest on debenture obligations of the Debtor to be made out of capital funds of the Debtor at times when they knew that the Debtor's actual earnings were far from sufficient to meet the interest expenses of said debenture obligations and at times when the liabilities of the Debtor exceeded its assets at fair market values;

(h) They determined, in the same endeavor, to keep control of the Debtor in their own hands and in hands friendly to Williams, and not to seek the haven

of the Bankruptcy Court in the interest of all the stockholders, debentureholders and creditors of the Debtor;

(i) Accordingly, and solely in the interest of Williams, they instructed the officers of the Debtor to refrain from filing any petition for reorganization and to pursue the policy of paying interest expense on the debenture obligations of the Debtor out of capital;

(j) They pursued and continued to pursue such acts and conduct and policies in the interest of Williams until the 23rd day of February, 1942, for the purpose of enabling Williams to destroy assets of the Debtor and to obtain the benefits of the statute of limitations and the defense of laches;

(k) They persisted in this conduct in the interest of Williams until advised on or about the 5th day of [fol. 118] February, 1942, by the Director of the Investment Company Division of the Securities and Exchange Commission by letter dated February 4, 1942, that the Division was considering recommending to the Commission that proceedings be instituted under Section 36 of the Investment Company Act of 1940 to enjoin a continued gross abuse of trust by the officers and directors of the Debtor in failing to liquidate or reorganize the Debtor under the circumstances.

M-10. Williams is justly obligated to the Debtor in the amounts set forth in paragraph "M-2" of this complaint, and held and now holds the said sums and all the profits derived therefrom in trust as the property of the Debtor herein and of plaintiffs as Trustees of said Debtor.

M-11. By reason of the premises, each of the persons named as participants herein has become and is now liable to account to the Debtor and to plaintiffs, as Trustees thereof as aforesaid, for the money and property set forth and referred to in paragraph "M-2", of this complaint.

M-12. No part of the said sums set forth in paragraph "M-2" of this complaint, for which Williams and each of the persons named as participants herein are liable and accountable as aforesaid, has ever been paid and returned to the Debtor or to plaintiffs as Trustees thereof,

in restitution or restoration or as compensation for losses and damages caused to the Debtor or to plaintiffs as its Trustees, by the corrupt, fraudulent and illegal acts as aforesaid.

M-13. The Debtor is entitled to recover from Williams the money and property set forth and referred to in paragraph "M-2" of this complaint, with appropriate interest thereon, together with all profits derived therefrom by [fol. 119] Williams, in restitution and restoration of the losses and damages caused to the Debtor by Williams' fraudulent, corrupt and illegal acts, and plaintiffs and the Debtor stand ready to treat and consider Williams, or whichever one of his wholly-owned corporate instrumentalities may be entitled thereto, as the owner and holder of 96,154 shares of the Debtor's common stock; 22,747 shares of the Debtor's convertible preferred stock of 1928; 28,432 shares of the Debtor's convertible preferred stock of 1929, and 2,715 shares of the Debtor's 7% preferred stock, and to deliver and return to Williams the foregoing shares of stock in addition to 68.423 shares of the common stock of North American Company, 70,195.979 shares of American Cities "B" stock and 15,600 shares of Electric Shareholdings common stock, together with all dividends and benefits accrued and accruing or incident to the ownership of the above-described stocks, from the respective dates appropriate thereto and more particularly set forth hereinabove in this complaint, including any and all rights accrued or accruing or pertaining to the above-described shares of the Debtor's common and preferred stocks by reason of any reorganization plan or agreement made or to be made in the reorganization proceeding above described and mentioned in paragraph "A-2" of this complaint, subject to any adjustments, liens or accountings required to be made in equity and good conscience.

N-1. Plaintiffs have no adequate remedy at law to which they are entitled and cannot secure full and adequate relief save in a court of equity where matters of this and similar nature are cognizable and relievable.

Wherefore, plaintiffs pray this Court adjudge and decree that:

1. The defendants conspired to waste, destroy, mis-
[fol. 120] appropriate, unlawfully acquire, convert and

otherwise wrongfully deal with the property and assets belonging to the Debtor or to which the Debtor was entitled, all as more particularly set forth in the complaint herein;

2. In the course and in the execution of the said conspiracy or conspiracies, defendants were guilty of breaches of trust with respect to the Debtor, waste of assets of the Debtor, and unlawful taking and disposition of the Debtor's property, or property to which the Debtor was entitled, all as more particularly set forth in the complaint herein;

3. The defendants and each of them have become and are now liable to account to the Debtor, and to plaintiffs as Trustees thereof, as aforesaid, for moneys and property received by defendants or any of them, for all losses to said Debtor or to plaintiffs, as its Trustees, and for all profits made or received by defendants, or any of them, as the result of the wrongful acts and breaches of trust of defendants, or any of them, all as more particularly set forth in the complaint herein;

4. Such adjustments be made as between plaintiffs and the defendants, or between and amongst the defendants as may be required by equity and good conscience;

5. Plaintiffs have such orders, decrees and process, interlocutory as well as final, as may be necessary or appropriate to enforce the relief to which plaintiffs are entitled;

6. Plaintiffs have such other and further relief as may be just and proper;

[fol. 121] 7. Plaintiffs recover from defendants the costs and disbursements of this action.

Austrian & Lance, by Carl J. Austrian, Attorneys for Plaintiffs, Office and P. O. Address, 61 Broadway, Borough of Manhattan, New York City.

SCHEDULE "A"

Name	Period of Incumbency as Director of Central States Electric Corporation
Harrison Williams	From June 10, 1912 to March 22, 1922
Louis E. Kilmarx	" March 22, 1922 to date
Walter C. Ross	" March 4, 1930 to August 8, 1932
Reuben E. Glass	" March 6, 1923 to August 8, 1932
Charles Ward Schroeder	" March 2, 1926 to April 6, 1937
James F. Fogarty	" January 6, 1926 to January 30, 1934
Herbert C. Freeman	" March 6, 1928 to December 28, 1934
Constantine A. H. Narlian	" March 5, 1929 to September 27, 1934
Clifford F. Stone	" May 28, 1929 to September 27, 1934
John H. Eccles	" January 30, 1934 to October 31, 1941
Robert Sealy	" April 4, 1933, to December 28, 1934
Harold A. Andersen	" September 27, 1934 to May 31, 1938 and January 10, 1940 to October 31, 1941
Otto A. Philipp	" September 27, 1934 to April 7, 1936
Clinton M. Finney	" December 28, 1934 to October 31, 1939
Albert E. Pardee	" April 7, 1936 to December 7, 1937
David G. McCornack	" December 7, 1937 to date
R. Gilman Smith	" May 31, 1938 to January 10, 1940
Christian A. Johnson	" April 5, 1938 to date
Hugh B. Baker	" January 10, 1940 to October 31, 1941

[fol. 122]

SCHEDULE "B"

Name	Period of Incumbency as Officer of Central States Electric Corporation
Harrison Williams	Chairman of Board of Directors from March 6, 1917 to March 22, 1922.
Louis E. Kilmarx	Assistant Secretary from December 2, 1919 to December 7, 1920; Assistant Treasurer from December 2, 1919 to December 7, 1920; Secretary from December 7, 1920 to March 1, 1921; Treasurer from December 7, 1920 to date; Assistant Secretary from March 8, 1922 to December 5, 1922; Secretary from December 5, 1922 to February 26, 1923; President from March 6, 1923 to July 3, 1929; and Vice-President from July 3, 1929 to date.

Name	Period of Incumbency as Director of Central States Electric Corporation
Walter C. Ross	Assistant Secretary from December 7, 1920 to March 1, 1921; Assistant Treasurer from December 7, 1920 to August 8, 1932; and Assistant Secretary from March 6, 1923 to August 8, 1932.
Reuben E. Glass	Vice-President from November 6, 1922 to August 8, 1932; and Secretary from March 6, 1923 to August 8, 1932.
Charles Ward Schroeder	Vice-President from March 2, 1926 to March 5, 1929, and from April 29, 1932 to May 5, 1933.
Constantine A. H. Narlian	Vice-President from March 5, 1929 to September 27, 1934, and Secretary from August 8, 1932 to September 27, 1934.
Clifford F. Stone	President from July 3, 1929 to September 27, 1934.
John H. Eccles	Assistant Secretary from August 8, 1932 to September 27, 1934; Assistant Treasurer from August 8, 1932 to date; and Secretary from September 27, 1934 to date.
[fol. 123]	
Harold A. Andersen	Vice-President from September 27, 1934 to date, and Assistant Secretary from September 27, 1934 to date.
R. Gilman Smith	President from May 31, 1938 to December 23, 1938.
Christian A. Johnson	President from December 23, 1938 to date.

SCHEDULE "C"

NAME	Period of Incumbency as Member of Executive Committee of Central States Electric Corporation
Louis E. Kilmarx	September 5, 1922 to April 3, 1934
James F. Fogarty	March 2, 1926 to January 30, 1934
Charles Ward Schroeder	March 2, 1926 to March 6, 1928
Herbert C. Freeman	March 6, 1928 to April 4, 1933
Clifford F. Stone	May 28, 1929 to April 3, 1932
Constantine A. H. Narlian	April 4, 1933 to April 3, 1934

[fol. 124] EXHIBIT "A (1)"

Agreement dated this 23rd day of July, 1929, between Central States Electric Corporation, a Virginia corporation (hereinafter called "Central States"), party of the first part; The Goldman Sachs Trading Corporation, a Delaware corporation (hereinafter called "Trading"), party of the second part, and Goldman, Sachs & Co., a copartnership having its principal place of business in the City of New York, N. Y. (hereinafter called the "Bankers"), parties of the third part, and Shenandoah Corporation, a Delaware corporation (hereinafter called the "New Company"), party of the fourth part,

The parties hereto hereby agree together as follows:

First: Central States and Trading have caused the New Company to be formed under the laws of Delaware, bearing the name "Shenandoah Corporation", with an authorized capital stock of 5,000,000 shares of serial preference stock of the par value of $50 per share and 15,000,000 shares of common stock without par value. The certificate of incorporation and by-laws of the New Company are in form of Annex A and B hereto respectively; and only such changes shall be made therein prior to the time of delivery of the preference stock and common stock hereunder as the parties hereto may agree upon. The initial issue of serial preference stock of the New Company shall consist of 1,000,000 shares of Optional 6% Convertible Preference Stock, Series of 1929 (hereinafter called the "Preference stock"), the terms of which shall be substantially as set forth in Annex A hereto with only such changes made therein prior to the time of delivery of the preference stock hereunder as the parties hereto may agree upon.

[fol. 125] Second: The New Company will issue and sell to purchasers to be found by Goldman, Sachs & Co., and Goldman, Sach & Co. agrees to find such purchasers, 1,000,000 full-paid and non-assessable shares of its common stock at the price of $12.50 per share.

Third: If Goldman, Sachs & Co. shall so request Central States and Trading shall each loan to Goldman, Sachs & Co. for the purpose of taking up and paying for said 1,000,000 shares of common stock the sum of $6,250,000 without interest, said sum to be repaid to Central States

and Trading on August 7, 1929 contemporaneously with the delivery of 1,000,000 shares of preference stock and 4,000,000 shares of common stock as hereinafter set forth. If for any reason the transactions set forth in this contract should not be consummated Goldman, Sachs & Co. shall have the right to "put" all or any part of 1,000,000 shares of such common stock in equal proportions to Central States and Trading at the price of $12.50 per share and Central States and Trading shall each reimburse Goldman, Sachs & Co. for the cost of any transfer stamps in connection therewith.

Fourth: Central States will issue or cause to be delivered to the New Company in such names as it may specify 480,770 full-paid and non-assessable shares of the common stock of Central States, as such shares shall be constituted after giving effect to the 200% stock dividend payable July 25, 1929 of which at least 384,616 shares shall be of original issue and shall pay to the New Company $20,000,000 in cash, together with a sum in cash equal to the accrued dividend on the 500,000 shares of preference stock hereinafter mentioned; Trading will issue and deliver to the New Company in such names as it may specify 238,096 full-paid and non-assessable shares of the capital stock of Trading, all of which shall be of original [fol. 126] issue, and shall pay to the New Company the sum of $20,000,000 in cash, together with a sum in cash equal to the accrued dividend on the 500,000 shares of preference stock hereinafter mentioned.

Of the consideration to be received by the New Company for the 5,000,000 shares of its common stock the Board of Directors at the time of the issue thereof shall determine and fix $25,000,000 of such consideration as capital and the balance of such consideration shall be surplus.

Fifth: The New Company will issue to Central States 500,000 full-paid and non-assessable shares of its preference stock and 2,000,000 full-paid and non-assessable shares of its common stock and will issue and deliver to Trading 500,000 full-paid and non-assessable shares of its preference stock and 2,000,000 full-paid and non-assessable shares of its common stock.

Sixth: Delivery of the 1,000,000 full-paid and non-assessable shares of the common stock to the purchasers

found by Goldman, Sachs & Co., or to Goldman, Sachs & Co., for the account of the purchasers found or to be found by them shall be made in the name of Goldman, Sachs & Co. in such denominations as Goldman, Sachs & Co. may designate against payment by or for the account of such purchasers to the New Company for said shares in current New York funds, at the office of Goldman, Sachs & Co., No. 30 Pine Street, New York, N. Y., at 3:00 o'clock P. M., Eastern Daylight Saving Time on July 26, 1929 or on such other date as may be agreed upon in writing between the parties hereto.

Seventh: Delivery by the New Company shall be made to Central States of the 500,000 full-paid and non-assessable shares of its preference stock, in the name of Gold- [fol. 127] man, Sachs & Co., and of the 2,000,000 full-paid and non-assessable shares of its common stock, in such names and denominations as Central States may specify, and delivery shall be made by the New Company to Trading of the 500,000 full-paid and non-assessable shares of its preference stock in the name of Goldman, Sachs & Co. and of the 2,000,000 full-paid and non-assessable shares of its common stock, in such names and denominations as Trading may specify against the delivery to the New Company by Central States and Trading, respectively, of the securities and cash as hereinabove set forth, at the office of Goldman, Sachs & Co., No. 30 Pine Street, New York, N. Y., at 10:00 o'clock A. M. Eastern Daylight Saving Time, on August 7, 1929 or on such other date as may be agreed upon in writing between the parties hereto.

The certificates representing the 96,154 shares of the common stock of Central States not of original issue to be delivered by Central States to the New Company shall be in transferable form as required by New York Curb Exchange delivery and with all signatures guaranteed by a New York bank or Curb or Stock Exchange house satisfactory to the New Company. Central States will immediately provide the New Company with funds necessary to cover the cost of all stock transfer stamps required in connection with the transfer thereof.

Eighth: Trading and Central States will each sell the 500,000 shares of the preference stock of the New Company to be received by them to purchasers to be found by a syndicate (hereinafter referred to as the "Syndicate")

at the price of $50 per share and accrued dividends. Goldman, Sachs & Co. will endeavor to form such a syndicate and prior to the public offering of preference stock and common stock Goldman, Sachs & Co. will deliver written notice to Central States and Trading as to whether or not [fol. 128] it has been successful in its endeavors to form such syndicate. In case of the formation of the syndicate as set forth in such notice Goldman, Sachs & Co. will cause to be delivered to Central States and Trading, together with such notice a written acceptance by the syndicate of its obligation to find purchasers for said 1,000,000 shares of preference stock as herein provided, or to take up and pay for on the delivery date any and all of said shares for which it may not have been able to find purchasers.

Ninth: Delivery by Central States and Trading of the certificates representing said 1,000,000 shares of preference stock issued in the name of Goldman, Sachs & Co. shall be made to Goldman, Sachs & Co. as syndicate managers for the account of the purchasers found or to be found by the syndicate, in such denominations as the syndicate may request, accompanied by New York and Federal stock transfer stamps, at the office of Goldman, Sachs & Co., No. 30 Pine Street, New York, N. Y., at 10:00 o'clock A. M., Eastern Daylight Saving Time, on August 7, 1929. Goldman, Sachs & Co. will cause Central States and Trading to be reimbursed for the cost of such transfer stamps.

Tenth: Prior to the termination of any syndicate and or selling group formed by Goldman, Sachs & Co. in connection with their marketing of 1,000,000 shares of preference stock and 1,000,000 shares of common stock, Goldman, Sachs & Co. shall have the right to give notice to Central States and Trading that it intends to "put" in equal amounts to Central States and Trading all or any part of 200,000 shares of the preference stock at the price of $50 per share plus accrued dividends, less with respect to each of such shares so "put" any selling group commission per share allowed by the syndicate to the mem- [fol. 129] bers of any selling group formed in connection with the marketing of such shares. Goldman, Sachs & Co. shall deliver and Central States and Trading shall take up and pay for the shares so "put" within five days after the termination of any such syndicate or selling group. Gold-

man, Sachs & Co. shall pay in equal amounts to Central States and Trading, in the event such "put" is made, that proportion of the originating net profits of Goldman, Sachs & Co. after deducting all expenses incurred in connection with this contract or the marketing of such shares, including losses of any trading accounts in connection with such marketing (but exclusive of any profits or commissions made by Goldman, Sachs & Co. as a member of any syndicate or selling group formed by it in connection herewith and any sums payable to or for the account of the New Company for any reason whatsoever) as the par value of the preference shares so "put" shall bear to $67,500,000. Goldman, Sachs & Co.'s statement of such originating net profits shall be final, conclusive and binding upon all parties.

Eleventh: The validity and legality of all things done pursuant to this agreement as well as the form and substance of all papers and documents used in connection with the performance of this agreement, shall be subject to the approval of Messrs. Sullivan & Cromwell; and each of the parties hereto shall cause them to be furnished with all papers and information which may be reasonably requested in this connection. Contemporaneously with each delivery and payment hereunder, each of the parties hereto and the syndicate shall receive from Messrs. Sullivan & Cromwell their written opinion passing favorably upon all legal phases of the situation.

[fol. 130] Twelfth: Goldman, Sachs & Co. or the syndicate may offer and sell the 1,000,000 shares of preference stock and 1,000,000 shares of common stock at its election on a "when issued" and/or "when delivered" basis or otherwise; and prior thereto the president or other appropriate officer of the New Company shall furnish Goldman, Sachs & Co. or the syndicate with a letter and summary thereof concerning the New Company substantially in the form and tenor of Annex C hereto; and Goldman, Sachs & Co. or the syndicate shall have the right to publish copies of said letter and summary thereof in its circular or otherwise. The capitalization and financial condition of the New Company and stock deliverable hereunder shall be in compliance with all the statements contained in said letter or summary thereof; and such statements shall be deemed to be representations on the basis of which Goldman, Sachs & Co. and/or the Syndicate shall be deemed to have purchased, or agreed

to find purchasers for the preference stock and common stock deliverable to the purchasers found by it hereunder.

Thirteenth: The New Company shall give Goldman, Sachs & Co. or the syndicate all such information regarding the New Company and its affairs and will execute and file all such papers as may be reasonably requested in order to facilitate the public offering of the preference stock and common stock and to enable the sale of the preference stock and common stock to be initially qualified under the Blue Sky Laws of such states as Goldman, Sachs & Co. in connection with the marketing of such shares may specify.

Fourteenth: The New Company, promptly upon request by Goldman, Sachs & Co., will apply on a "when issued" basis or otherwise for the listing of its preference stock [fol. 131] and/or of its common stock on the Boston Stock Exchange, on the New York Curb Exchange and/or on the Chicago Stock Exchange or on such other exchanges as may be agreed on; and Goldman, Sachs & Co. shall be under no obligation to give notice that it has formed the syndicate or to cause the syndicate to deliver its undertaking to find purchasers for said 1,000,000 shares of preference stock unless prior to the public offering thereof Central States and Trading shall have caused the 1,000,000 full-paid and non-assessable shares of common stock to have been authorized for listing and admission to trading on the Boston Stock Exchange. The New Company shall comply with all the rules and regulations of said exchange or exchanges in all respects in connection with such listing. The definitive stock certificates shall be in form complying with the requirements for listing on the New York Stock Exchange.

Fifteenth: Goldman, Sachs & Co. shall pay or cause to be paid all expenses in connection with the incorporation and organization of the New Company and the preparation, issue and delivery of the 5,000,000 shares of common stock of the New Company and the 1,000,000 shares of its preference stock including the original issue stamps thereon, New York or Federal transfer stamps on the 1,000,000 shares of common stock and 1,000,000 shares of preference stock to the purchasers to be found by the syndicate, the cost of qualifying the preference stock and common stock under

the various Blue Sky laws and the initial cost of listing the 5,000,000 shares of common stock and 1,000,000 shares of preference stock on the Boston Stock Exchange and/or the New York Curb Exchange or such other exchanges as Goldman, Sachs & Co. may determine prior to the final delivery date, the cost of preparation of temporary and definitive [fol. 132] stock certificates, the initial charges of the Transfer Agents and Registrars to countersign and register the preference stock and common stock to be delivered to the purchasers to be found by the syndicate and the 2,000,000 shares of common stock to be delivered to each of Central States and Trading, the cost of printing the charter, by-laws, etc. and all fees and disbursements of counsel.

Sixteenth: In case the preference stock and/or the common stock is not delivered as herein provided by reason of the default of either Central States or Trading, the party so defaulting shall reimburse the other parties hereto and the syndicate for all out-of-pocket expenses actually incurred by them respectively hereunder, including the making of preparations or arrangements for the offering or sale of the preference stock or common stock.

Seventeenth: For a period of one year from the date hereof or six months from the date of the termination of any syndicate or selling group formed by Goldman, Sachs & Co. in connection with the marketing of the preference and common stock, whichever date shall be earlier, the New Company shall not, without the consent of Goldman, Sachs & Co., in writing, issue and sell or distribute, or agree to issue and sell, or offer for issue or sale any additional shares of its preference stock of any series or any other class of stock (except for common stock issued upon conversion of the preference stock and common stock issued by way of dividends on the common stock or preference stock at current rates) or any of its obligations of indebtedness maturing more than twelve months after the date of issue thereof.

Eighteenth: For a period of one year from the date hereof or of six months from the date of the termination [fol. 133] of any syndicate or selling group formed by Goldman, Sachs & Co. in connection with the marketing of the preference or common stock, whichever date shall be earlier, Central States and Trading each agree that they will not,

without the consent of Goldman, Sachs & Co. in writing, sell any part of the 2,000,000 shares of common stock of the New Company to be purchased by each of them as hereinbefore provided.

Nineteenth: The original board of directors of the New Company shall consist of Messrs. Waddill Catchings, John Foster Dulles, Clifford F. Stone, Sidney J. Weinberg and Harrison Williams.

Twentieth: All notices under this agreement are to be in writing, and if to the New Company shall be sufficient in all respects if delivered in person or sent by registered mail to Shenandoah Corporation, care of Messrs, Sullivan & Cromwell, 48 Wall Street, New York, N. Y.; if to Central States shall be sufficient in all respects if delivered in person or sent by registered mail to C. F. Stone, President, Central States Electric Corporation, No. 60 Broadway, New York, N. Y.; if to The Goldman Sachs Trading Corporation shall be sufficient in all respects if delivered in person or sent by registered mail to The Goldman Sachs Trading Corporation, No. 30 Pine Street, New York, N. Y.; and if to the Bankers or the Syndicate shall be sufficient in all respects if delivered in person or sent by registered mail to Goldman, Sachs & Co., No. 30 Pine Street, New York, N. Y.

This agreement and each of its provisions will bind and enure to the benefit of the parties hereto and their respective successors and assigns.

In witness whereof, the parties hereto have duly executed [fol. 134] this agreement as of the day and year first above written.

Central States Electric Corporation, by (Sgd.) C. F. Stone, President; The Goldman Sachs Trading Corporation, by (Sgd.) Waddill Catchings, Vice-President; (Sgd.) Goldman Sachs & Co., Shenandoah Corporation, by (Sgd.) C. F. Stone, President.

EXHIBIT "A(2)"

July 24, 1929.

North American Securities Company, 60 Broadway, New York, N. Y.

DEAR SIRS:

This will confirm our understanding that your corporation has agreed to transfer and deliver to Shenandoah Corporation 96,154 full-paid and non-assessable shares of the common stock of the undersigned Corporation as such [fol. 135] shares shall be constituted after giving effect to the 200% stock dividend payable on July 25, 1929, and that the undersigned Corporation has agreed to pay your corporation therefor the sum of Five million Dollars ($5,000,000) in cash.

Delivery of such shares will be made to Shenandoah Corporation at the office of Goldman, Sachs & Co., No. 30 Pine Street, New York, N. Y., at 10 o'clock A. M. Eastern Daylight Saving Time, on August 7, 1929 against payment to you therefor in New York funds.

The certificates representing such shares of common stock shall be in transferable form as required by the New York Curb Exchange with all signatures guaranteed by a New York bank or Curb or New York Stock Exchange house satisfactory to Shenandoah Corporation. Your corporation will immediately provide Shenandoah Corporation with funds necessary to cover the cost of all stock transfer stamps required in connection with the transfer of such shares.

In case for any reason your corporation does not deliver such shares of common stock as above provided, the undersigned Corporation may, at its option, forthwith terminate this agreement, and in such case your corporation shall reimburse the undersigned Corporation for all out-of-pocket expenses incurred by it because of such failure to deliver, including all expenses which it may be required to pay pursuant to the terms of an agreement dated July 23, 1929, between the undersigned Corporation, The Goldman Sachs Trading Corporation, Goldman, Sachs & Co. and Shenandoah Corporation because of such failure to deliver, with a copy of which agreement your corporation has been furnished.

Please confirm that the foregoing is in accordance with your understanding by signing and returning the enclosed [fol. 136] counterpart of this letter, whereupon it will constitute a binding agreement between us.

Very truly yours, Central States Electric Corporation, by (sgd.) C. F. Stone, President.

Confirmed and accepted: July 24, 1929. North American Securities Company, by (sgd.) L. E. Kilmarx, President.

EXHIBIT "B(1)"

Agreement dated August 19, 1929 between Central States Electric Corporation, a Virginia corporation (hereinafter called "Central States"), party of the first part, The Goldman Sachs Trading Corporation, a Delaware corporation (hereinafter called "Trading"), party of the second part, Shenandoah Corporation, a Delaware corporation (hereinafter called "Shenandoah"), party of the third part, Blue Ridge Corporation, a Delaware corporation (hereinafter called the "Corporation"), party of the fourth part and Goldman, Sachs & Co., a copartnership having its principal place of business in the City of New York (hereinafter called the "Bankers"), party of the fifth part.

The parties hereto hereby agree together as follows:

First: Shenandoah shall issue and sell to Central States, and Central States shall purchase from Shenandoah, 375,000 [fol. 137] full-paid and non-assessable shares, without par value, of the common stock of Shenandoah, at the price of $33.33⅓ per share and 375,000 full-paid and non-assessable shares, of the par value of $50 each, of the Optional 6% Convertible Preference Stock, Series of 1929, of Shenandoah at the price of $50 per share, plus accrued (cash) dividends to the date of delivery. Shenandoah shall issue and sell to Trading, and Trading shall purchase from Shenandoah, 375,000 full-paid and non-assessable shares, without par value, of the common stock of Shenandoah at the price of $33.33⅓ per share and 375,000 full-paid and non-assessable shares, of the par value of $50 each, of the Optional 6% Convertible Preference Stock, Series of 1929, of Shenandoah at the price of $50 per share, plus accrued (cash) dividends to the date of delivery.

Second: The Corporation shall issue and sell to Shenandoah, and Shenandoah shall purchase, from the Corporation, 6,250,000 full-paid and non-assessable shares, without par value of Common Stock of the Corporation for the aggregate price of $62,500,000.00.

Third: The Corporation shall issue and sell to the Bankers, and the Bankers shall purchase from the Corporation, 1,000,000 full-paid and non-assessable shares, without par value, of the Common Stock of the Corporation for the aggregate price of $15,000,000 and 1,000,000 full-paid and non-assessable shares, of the par value of $50 each, of the Optional 6% Convertible Preference Stock, Series of 1929, of the Corporation for the aggregate price of $50,000,000 plus accrued (cash) dividends to the date of delivery.

Fourth: Delivery of the 1,000,000 shares of Common Stock of the Corporation to the Bankers, in the form of [fol. 138] temporary certificates issued in the name of Goldman, Sachs & Co. in such denominations as the Bankers may request, shall be made to the Bankers against payment therefor in New York funds, at the office of Goldman, Sachs & Co., No. 30 Pine Street, New York, N. Y., at 3:00 o'clock P. M. (Eastern Daylight Saving Time) on August 19, 1929.

At the request of the Bankers, Shenandoah shall loan to the Bankers, for the purpose of taking up and paying for the said 1,000,000 shares of Common Stock of the Corporation, the sum of $15,000,000, without interest, to be repaid to Shenandoah contemporaneously with the delivery to the Bankers of the 1,000,000 shares of Preference Stock of the Corporation, as hereinafter provided. If for any reason the transactions as provided in this Agreement shall not be consummated, the Bankers shall have the right to "put" all or any part of the 1,000,000 shares of Common Stock of the Corporation to Shenandoah at the price of $15 per share, and Shenandoah shall reimburse the Bankers for the cost of any stock transfer stamps in connection therewith.

Fifth: Delivery of the 1,000,000 shares of Preference Stock of the Corporation to the Bankers, in the form of temporary certificates issued in the name of Goldman, Sachs & Co. in such denominations as the Bankers may request, shall be made to the Bankers against payment

therefor in New York funds, at the office of Goldman, Sachs & Co., No. 30 Pine Street, New York, N. Y., at 10:00 o'clock A. M. (Eastern Daylight Saving Time) on September 5, 1929.

Delivery of the 375,000 shares of common stock and the 375,000 shares of preference stock of Shenandoah to Central States, in the form of temporary certificates issued in such names and denominations as Central States may request, and delivery of the 375,000 shares of common stock and the [fol. 139] 375,000 shares of preference stock of Shenandoah to Trading, in the form of temporary certificates issued in the name of Goldman, Sachs & Co. in such denominations as Trading may request, shall be made to Central States and Trading, respectively, against payment therefor in New York funds, contemporaneously with the delivery by the Corporation to the Bankers of the 1,000,000 shares of its Preference Stock.

Delivery of the 6,250,000 shares of Common Stock of the Corporation to Shenandoah, in the form of temporary certificates issued in such names and denominations as Shenandoah may request, shall be made to Shenandoah, against payment therefor in New York funds, contemporaneously with the delivery by the Corporation to the Bankers of the 1,000,000 shares of its Preference Stock.

Sixth: Attached hereto as Annexes A and B, respectively, are true copies of the certificate of incorporation and by-laws of the Corporation. The Corporation undertakes and warrants that at the time of delivery to the Bankers of the shares of the Common Stock and Preference Stock of the Corporation and at the time of delivery to Shenandoah of the shares of Common Stock of the Corporation, its certificate of incorporation and by-laws shall be in the form and tenor of said Annexes A and B, with only such changes therein as the parties hereto may agree to in writing.

Seventh: The validity and legality of the incorporation and the existence of the Corporation and of the authorization and issue of the stock of the Corporation and of Shenandoah, full-paid and non-assessable, as well as the form and substance of all papers and documents used in connection with the performance of this Agreement, shall be subject to the approval of Messrs. Sullivan & Cromwell;

[fol. 140] and each of the parties hereto shall cause them to be furnished with all papers and information which they may reasonably request in this connection. Contemporaneously with each delivery and payment hereunder each of the parties hereto shall receive from Messrs. Sullivan & Cromwell their written opinion passing favorably on the aforesaid matters.

Eighth: The Bankers may offer and sell the 1,000,000 shares of Preference Stock and 1,000,000 shares of Common Stock of the Corporation, at its election, on a "when issued," basis or otherwise; and prior thereto the Corporation will cause its President or other appropriate officer to furnish the Bankers with a letter and summary thereof, concerning the Corporation, substantially in the form and tenor of Annexes C and D hereof, respectively. The Bankers and/or any group formed by the Bankers in connection with the marketing of said stock shall have the right to publish copies of said letter and summary in their circular or otherwise. The Corporation represents and warrants that the statements contained in said letter and summary are true, and agrees that such statements shall be representations on the basis of which the Bankers shall have purchased the Common Stock and Preference Stock of the Corporation hereunder.

Ninth: The Corporation will give the Bankers all such information regarding it and its affairs, and will execute and file all such papers as may be reasonably requested in order to facilitate the public offering of the Common Stock and the Preference Stock of the Corporation and to permit the qualification for sale of such stock under the Blue Sky Laws of such states as the Bankers may specify.

[fol. 141] Tenth: Promptly upon request of the Bankers, the Corporation will apply for listing (upon a "when issued" basis or otherwise) of its Preference Stock and its Common Stock on the Boston Stock Exchange, on the New York Curb Exchange and/or the Chicago Stock Exchange or such other exchanges as may be agreed upon; and the Bankers shall be under no obligation to take up and pay for said 1,000,000 shares of Preference Stock unless prior to August 22, 1929 the Corporation shall have caused 1,000,000 shares of its Common Stock to have been authorized for listing and admission to trading on the Bos-

ton Stock Exchange. The Corporation shall comply with all the rules and regulations of said exchange or exchanges in all respects in connection with such listing. The definitive stock certificates shall be in the form complying with the requirements for listing on the New York Stock Exchange.

Eleventh: The Bankers shall pay or cause to be paid all expenses in connection with the incorporation and organization of the Corporation and the preparation, issue and delivery of the 7,250,000 shares of Common Stock and 1,000,000 shares of Preference Stock of the Corporation, including original issue stamps with respect thereto, the cost of qualifying the Preference Stock and Common Stock under the various Blue Sky Laws, the initial cost of listing of 7,250,000 shares of Common Stock and 1,000,000 shares of Preference Stock of the Corporation on the Boston Stock Exchange and the New York Curb Exchange, and such other exchanges as the Bankers may determine prior to the delivery date, the cost of preparing temporary and definitive stock certificates of the Corporation, the initial charges of the transfer agents and registrars for the counter-signature and registration of 7,250,000 shares of Common Stock and [fol. 142] 1,000,000 shares of Preference Stock of the Corporation, the cost of printing the certificate of incorporation, by-laws, etc., and all fees and disbursements of counsel, provided, however, that the Bankers shall not bear any part of the expenses in connection with the shares to be issued in exchange for stocks of other corporations as provided in Annex C.

In case the Preference Stock and/or Common Stock of the Corporation is not delivered as herein provided by reason of the default of either Central States or Trading or Shenandoah or the Corporation, the party so defaulting shall reimburse the other parties hereto for all out-of-pocket expenses actually incurred by them, respectively, hereunder, including the making of preparations or arrangements for the offering or sale of the Common Stock and/or Preference Stock of the Corporation.

Twelfth: Until six months after the termination of any Syndicate or group formed by the Bankers in connection with the marketing of the stock, but not exceeding one year from the time of delivery to the bankers of the stock hereunder, the Corporation will not, without the written

consent of the Bankers, issue and sell or distribute, or offer for issue and sale, any additional shares of its stock of any class (except shares issued upon conversion of the Preference Stock and by way of dividends on the Common Stock or Preference Stock and except for shares issued in exchange for stocks of other corporations as provided in Annex C hereof) or any of its obligations of indebtedness maturing in more than twelve months after the date of issue thereof.

Thirteenth: Until six months after the termination of any Syndicate or group formed by the Bankers in connection with the marketing of the stock, but not exceeding one year from the time of delivery to the Bankers of the stock [fol. 143] hereunder, Shenandoah will not, without the written consent of the Bankers, sell any part of the 6,250,000 shares of the Common Stock of the Corporation to be purchased by it as herein provided.

Fourteenth: The original Board of Directors of the Corporation shall consist of Messrs. Waddill Catchings, John Foster Dulles, Clifford F. Stone, Sidney J. Weinberg and Harrison Williams.

Fifteenth: All notices under this Agreement shall be in writing, and if to Central States shall be sufficient in all respects if delivered in person or sent by registered mail to C. F. Stone, President of Central States Electric Corporation, No. 60 Broadway, New York, N. Y.; if to Trading shall be sufficient in all respects if delivered in person or sent by registered mail to The Goldman Sachs Trading Corporation, No. 67 Wall Street, New York, N. Y.; if to Shenandoah shall be sufficient in all respects if delivered in person or sent by registered mail to C. F. Stone, President of Shenandoah Corporation, No. 60 Broadway, New York, N. Y.; if to the Corporation shall be sufficient in all respects if delivered in person or sent by registered mail to C. F. Stone, President of Blue Ridge Corporation, No. 60 Broadway, New York, N. Y., and if to the Bankers shall be sufficient in all respects if delivered in person or sent by registered mail to Goldman, Sachs & Co., No. 30 Pine Street, New York, N. Y.

This Agreement and each of its provisions shall bind and enure to the benefit of the parties hereto and their respective successors and assigns.

In witness whereof, the parties hereto have duly exe- [fol. 144] cuted this Agreement as of the day and year first above written.

Central States Electric Corporation, By (Sgd.) C. F. Stone, President; The Goldman Sachs Trading Corporation, By (Sgd.) Waddill Catchings, President; Shenandoah Corporation, By (Sgd.) C. F. Stone, President; Blue Ridge Corporation, By (Sgd.) C. W. Schroeder, Vice-President; Goldman, Sachs & Co., (sgd.) (Goldman, Sachs & Co.)

[fol. 145] EXHIBIT "B(2)"

Blue Ridge Corporation, Sixty Broadway, New York

August 21, 1929.

Central States Electric Corporation, New York, N. Y.

DEAR SIRS:

This is to confirm the fact that you have agreed to sell to us and we have agreed to purchase from you the following securities for $35,000,041, their aggregate market value at the close of business on August 17, 1929:

Shares		Closing Market 8/17/29	Total
29,200	Commercial Investment Trust Corpn.	185	$5,402,000.
69,000	Mathieson Alkali Works	59	4,071,000.
18,000	Detroit Edison Company	349	6,282,000.
7,900	Stone & Webster	166	1,311,400.
14,000	Pacific Gas & Electric Co.	76¾	1,074,500.
4,000	Peoples Gas Light & Coke Co.	396	1,584,000.
7,000	American Tel. & Tel. Co.	293	2,051,000.
10,000	Consolidated Gas Co. of New York	179¾	1,797,500.
68,423	The North American Co.	167	11,426,641.

This purchase is to be made subject to the following terms and conditions:

For thirty days from September 5, 1929, you are to have a "call" on the following of the securities listed

[fol. 146] above at a price equal to two points above the prices paid by us for said securities as indicated above:

Shares	
18,000	Detroit Edison Company.
14,000	Pacific Gas & Electric Co.
4,000	Peoples Gas Light & Coke Co.
7,000	American Tel. & Tel. Co.
10,000	Consolidated Gas Co. of New York.

and in case you shall exercise such "call" you are to have for a like period of thirty days from September 5, 1929, a "put" of said last-mentioned securities to us at a price equal to two points above the prices paid by us to you therefore as indicated above.

Kindly indicate your agreement with all of the foregoing by signing and returning the enclosed duplicate hereof, whereupon this letter will constitute the agreement between us.

Very truly yours, Blue Ridge Corporation, By (Sgd.) C. F. Stone, Pres.

Confirmed: August 21, 1929.

Central States Electric Corporation, By L. E. Kilmarx, V. P.

[fol. 147] EXHIBIT "E"

Memorandum of Agreement, Between Central States Electric Corporation and American Cities Power & Light Corporation (Hereinafter Referred to as "First Parties") and Tri-Continental Corporation and Selected Industries Incorporated (Hereinafter Referred to as "Second Parties").

1. First Parties agree to sell and deliver to Second Parties 1,243,000 shares of Common Stock of Electric Shareholdings Corporation (hereinafter called Electric Shareholdings), in exchange for 1,864,500 shares of Common Stock of Blue Ridge Corporation (hereinafter called Blue Ridge), and in consideration thereof Second Parties agree to sell and deliver to First Parties 1,864,500 shares of Common Stock of Blue Ridge in exchange for 1,243,000 shares of Common Stock of Electric Shareholdings. Such

exchange shall be consummated at the office of American Cities Power & Light Corporation, No. 1 Exchange Place, Jersey City, New Jersey, on or before the close of business on Tuesday, November 22, 1938. All certificates shall be duly endorsed in blank for transfer, or be accompanied by duly executed stock transfer powers in blank, with signatures duly guaranteed, and shall bear all necessary stock transfer tax stamps.

2. The obligation of Second Parties to make the exchange is subject to the following conditions precedent:

(a) That Second Parties shall have been furnished prior to the exchange with a certificate of Touche, Niven & Co. to the effect that the balance sheet of Electric Shareholdings as at November 16, 1938, which is attached hereto as Exhibit A, correctly reflects the financial condition of Electric Shareholdings as of that date.

[fol. 148] (b) That at the time of such exchange the portfolio of stocks and other securities owned by Electric Shareholdings shall consist of the stocks and other securities set forth on Exhibit B annexed hereto.

(c) That First Parties shall have delivered to Second Parties prior to the exchange a certificate signed by the President and Treasurer of Electric Shareholdings to the effect that to the best of their knowledge, information and belief there were no liabilities or commitments, direct or contingent, including liability for Federal taxes, of Electric Shareholdings as of November 16, 1938, which are not reflected on said balance sheet, Exhibit A, and that between the date of such balance sheet and the date of such exchange no cash has been disbursed except in payment of ordinary operating expends in due course or in connection with the portfolio changes hereinafter referred to, and no additional liabilities or commitments have been incurred or taken except such as may be necessary to change the portfolio to correspond with the portfolio referred to in paragraph (b) above, and that no other transaction has taken place between such dates except as contemplated by this Agreement.

(d) That First Parties shall have delivered to Second Parties a letter from Messrs. Sullivan &

Cromwell, counsel for Electric Shareholdings, stating that to the best of their knowledge, information and belief there is no material pending or threatened litigation against Electric Shareholdings.

3. The obligation of First Parties to complete the exchange shall be subject to the condition precedent that between November 16, 1938, and the date of such exchange Blue Ridge shall not have entered into any new trans- [fol. 149] action or commitment or incurred any new liability without securing the prior approval of First Parties.

4. Second Parties shall have the right, at their option, in lieu of delivering 1,864,500 shares of Common Stock of Blue Ridge upon the exchange herein provided for, to deliver 1,612,161 shares of Common Stock of Blue Ridge plus a due bill calling for the delivery of an additional 252,339 shares of Common Stock of Blue Ridge within seven days after the date of such exchange. If such option is exercised, the due bill will be delivered to American Cities Power & Light Corporation.

5. The obligations of First Parties and Second Parties to each other hereunder shall be joint and several, but as between the two First Parties and as between the two Second Parties it is contemplated that the stocks deliverable upon the exchange herein provided for will be as follows:

	Electric Shareholdings stock deliverable	Blue Ridge stock receivable
Central States Electric Corporation	594,432 shs.	891,648 shs.
American Cities Power & Light Corporation	648,568 "	972,852 "
Total	1,243,000 "	1,864,500 "

	Electric Shareholdings stock receivable		Blue Ridge stock deliverable	
Tri-Continental Corporation	3 957,35[0]*	shs.	1,436,030	shs.
Selected Industries Incorporated	7 285,64 [1]*	"	428,470	"
Total	1,243,000	"	1,864,500	"

* Figures enclosed in brackets struck out.

[fol. 150] 6. The obligations of each of the four parties to this Agreement are further conditioned upon the approval or ratification of this Agreement by the Boards of Directors of all the parties hereto on or before the close of business on Monday, November 21, 1938.

In witness whereof, each of the parties hereto has caused this Agreement to be duly executed and delivered in Jersey City, New Jersey, this 18th day of November, 1938.

Central States Electric Corporation, by (Sgd.) L. E. Kilmarx, Vice Pres.

Attest: (Sgd.) Addison Boren, Asst. Secy.

American Cities Power & Light Corporation, by (Sgd.) C. M. Finney, President, First Parties.

Attest: (Sgd.) H. A. Andersen, Secy.

Tri-Continental Corporation, by (Sgd.) Thurston P. Blodgett, Vice-President.

Attest: (Sgd.) Kenneth N. Chalmers, Secy.

Selected Industries Incorporated, by (Sgd.) Paul Barthelet, Vice President, Second Parties.

Attest: (Sgd.) Kenneth N. Chalmers.

[fol. 151] EXHIBIT "I(1)"

New Empire Corporation

Sixty Broadway, New York

February 15, 1923.

Central States Electric Corporation, 60 Broadway, New York, N. Y.

GENTLEMEN:

We submit for your consideration the following proposal:

(a) For and in consideration of the compensation hereinafter set forth, we will undertake supervision of the operation and financing of your business and will make available to you in connection therewith the advice, assistance and service of our entire organization, which shall include experts thoroughly experienced in the analysis of the intrinsic and market values of securities and investments, such organization to be equipped to render you all services required other than such services as your officers with the approval of your Board of Directors may otherwise provide for.

(b) With your approval, we shall furnish at our expense a President, Vice-President, Treasurer, Secretary and such additional officers as may be elected by your Board of Directors to serve at its pleasure and none of whom shall draw any salaries from your company, and in addition such employees as your officers may require in performing their duties.

(c) We shall maintain or provide for the mainten-[fol. 152] ance, at our expense, all such offices as may be required by your company for the use of its officers in the transaction of its business. Without expense to you, we shall furnish all necessary data and records for the keeping of the corporate books and from time to time, as may be required by your Board of Directors, prepare full and complete reports of the operation, condition and management of your business.

Our services will not include services as transfer agent and registrar, or the services of public accountants, and expenses incidental to the holding of your stockholders,

directors, and executive committee meetings, which are to be borne by you.

For the foregoing services you will make monthly payments to the undersigned at the rate of $65,000 per annum.

This agreement shall commence as of February 1, 1923, and may be terminated at any time by either of the parties hereto, upon thirty (30) days' written notice to the other party, and shall continue in force until so terminated.

Your acceptance hereof shall constitute an agreement between us.

Yours very truly, New Empire Corporation, by (Sgd.) Loring H. Hoover, Vice-President.

Accepted: Central States Electric Corporation, by (Sgd.) R. E. Glass, Vice-President.

[fol. 153] EXHIBIT "I-(2)"

New Empire Corporation

Sixty Broadway, New York

October 1, 1924.

Central States Electric Corporation, 60 Broadway, New York City.

GENTLEMEN:

This will confirm agreement with you to modify your contract with us dated February 15, 1923, so that compensation for services be reduced, and that payments thereunder, beginning today, shall be paid monthly at the rate of $18,000 per annum.

Yours very truly, New Empire Corporation, by (Sgd.) Loring R. Hoover, Vice President.

EXHIBIT "K(1)"

The North American Co., 60 Broadway, New York, N. Y.

DEAR SIRS:

Ashland Securities Corporation proposes that there shall be formed under your supervision a corporation organized under the laws of Delaware under a name approved by you,

with a capitalization and assets described in the attached [fol. 154] circular. It is proposed that you transfer to such corporation to be formed $11,015,200 par value of common stock (being all the common stock) of Union Electric Light & Power Co. (of St. Louis) and also transfer to the nominee of the undersigned $3,000,000 par amount of the 6 per cent preferred stock of the North American Co. and that in consideration thereof the North American Co. will receive 200,000 shares (being all the common shares without par value) of the corporation to be formed.

Delivery of securities to be at the office of the North American Co. in New York City within 30 days from date.

Ashland Securities Corporation agrees that it will, in the event of the acceptance of this offer by you, enter into two agreements with the corporation to be formed, as shown in the two annexed letters from it to such corporation.

Ashland Securities Corporation, by Leonard Kennedy, President; R. E. Glass, Secretary.

March 24, 1922.

EXHIBIT "K(2)"

North American Edison Co.

DEAR SIRS:

We offer to sell to you $10,940,100 par value of the common stock of the Cleveland Electric Illuminating Co. for $11,540,000 cash, delivery to be made at the office of the North American Co. in New York City not later than 30 days from date.

It is understood that in addition the North American [fol. 155] Co. shall deliver to us or our nominees $3,000,000 par value of the 6 per cent cumulative preferred stock, also for this account.

Ashland Securities Corporation, by Leonard Kennedy, President; R. E. Glass, Secretary.

March 24, 1922.

EXHIBIT "K(3)"

New York, N. Y., March 24, 1922.

Central States Electric Corporation, New York City.

GENTLEMEN:

We offer to buy from you $10,940;100 par value of the common stock of the Cleveland Electric Illuminating Co. to be delivered to us or to our nominees for $3,000,000 par amount preferred stock of the North American Co. and $10,810,200 cash.

Delivery to be made at the office of the North American Co. in New York City within 30 days from date.

In the event that you are not able to make delivery because of failure of approval of Ohio Public Utilities Commission this agreement will be void and of no effect.

Please advise your acceptance.

Very truly yours, Ashland Securities Corporation, by Leonard Kennedy, President; R. E. Glass, Secretary.

[fol. 156] IN UNITED STATES DISTRICT COURT

NOTICE OF MOTION OF DEFENDANTS ONONDAGA CORPORATION, ET AL.

[Same Titles]

SIRS:

Please take notice, that on the summons herein, dated July 5, 1945, the complaint (as amended), the Marshal's returns of service of process on file herein respectively, the annexed affidavits of J. C. M. Colton, Clifford F. Stone, Clinton M. Finney, Albert E. Pardee and Harrison Williams, respectively, sworn to on the dates shown thereon, the undersigned will move this Court, at a Stated Term for Motions, to be held at the United States Court House, Foley Square, in the Borough of Manhattan, City of New York, on October 16, 1945, at 10:30 A. M. or as soon thereafter as counsel can be heard, for the following relief:

1. An order pursuant to Rule 56 for the entry of summary judgment in favor of the defendants Harrison Williams, Clifford F. Stone, Albert E. Pardee, Clinton M. Finney and Federal Utilities, Incorporated, dismissing the

complaint as to said defendants, on the ground that the transactions complained of are barred by the applicable State Statute of Limitations and the said defendants are entitled to a judgment in their favor as a matter of law;

2. An order for judgment pursuant to Rule 12(b) in favor of the defendants dismissing the complaint on the ground that the Southern District Court of New York lacks jurisdiction over the subject matter;

3. An order for judgment pursuant to Rule 12(b) in favor of defendants New Empire Corporation, Electric Invest- [fol. 157] ment Corporation and Utilities Securities Corporation, quashing the service of process and dismissing the complaint on the ground that said defendants are foreign corporations not doing business in New York and the Southern District Court lacks jurisdiction over the said defendants, and as to New Empire Corporation on the further ground that the claim against it did not arise in New York, and it is not licensed to do business in New York and the Southern District Court of New York is the improper venue.

4. An order for judgment pursuant to Rule 12(b) in favor of Onondaga Corporation and Federal Utilities, Incorporated, named as defendants, quashing the service of process and dismissing the complaint, on the ground that said corporations have been duly dissolved and are not amenable to suit and that there was insufficiency of service of process.

Please take further notice, that answering affidavits hereon shall be served prior to the day of hearing in accordance with the rules.

Dated: October 1, 1945.

Milton Pollack, Attorney for Onondaga Corporation, Federal Utilities Corporation, New Empire Corporation, Electric Investment Corporation, and Utilities Securities Corporation, named as Defend- [fol. 158] ants, Milton Pollack and Sullivan & Cromwell, Attorneys for Harrision Williams, Clifford E. Stone, Albert E. Pardee and Clinton

M. Finney, named as Defendants, Office & P. O. Address, 111 Broadway, Manhattan, New York, N. Y.

To: Austrian & Lance, Esqs., Attorneys for Plaintiffs, 61 Broadway, New York, N. Y.

IN UNITED STATES DISTRICT COURT

NOTICE OF MOTION OF DEFENDANTS SACHS, ET AL.

[Same Title]

SIRS:

Please take notice that, on the summons herein, dated July 5, 1945, the complaint, the Marshal's returns of service of process on file herein respectively, the annexed affidavits of Howard J. Sachs, sworn to August 29, 1945, and of John Foster Dulles, sworn to September 4, 1945, and of Walter E. Sachs and Henry S. Bowers, sworn to September 7, 1945, and of Sidney J. Weinberg, sworn to September 7, 1945, and of Waddill Catchings, sworn to September 11, 1945, the undersigned will move this Court, at a Stated Term for Motions, to be held at the United States Court House, Foley Square, in the Borough of Manhattan, [fol. 159] City of New York, on October 16, 1945, at 10:30 A. M. or as soon thereafter as counsel can be heard, for the following relief:

1. An order pursuant to Rule 56 for the entry of summary judgment in favor of the defendants Howard J. Sachs, Walter E. Sachs, Dulles, Bowers, Weinberg and Catchings, and each of them dismissing the complaint as to said defendants, and each of them, on the ground that the transaction and transactions complained of are barred by the applicable State Statute of Limitations and the said defendants are entitled to a judgment in their favor and in the favor of each of them as a matter of law;

2. An order for judgment pursuant to Rule 12(b) in favor of the defendants and each of them dismissing the complaint on the ground that the Southern District Court of New York lacks jurisdiction over the subject matter herein.

3. An order for judgment pursuant to Rule 12(b) in favor of the defendant Howard J. Sachs on the ground that the venue of these claims in the Southern District of New York is improper.

Please take further notice, that answering affidavits hereon shall be served prior to the day of hearing in accordance with the rules.

Dated: October 1, 1945.

Sullivan & Cromwell, Attorneys for Defendants Walter E. Sachs, Howard J. Sachs, Henry S. Bowers, Sidney J. Weinberg, John Foster Dulles and Waddill Catchings, 48 Wall Street, New York 5, N. Y.

[fol. 160] To: Austrian & Lance, Esqs., Attorneys for Plaintiffs, 61 Broadway, New York, N. Y.

In United States District Court

Motions of the Defendants Fogarty and Freeman

[Same Title]

Defendants James F. Fogarty and Herbert C. Freeman move the court as follows:

1. To dismiss the action as against said defendants and each of them, pursuant to Rule 12(b) of the Rules of Civil Procedure for the District Courts of the United States, because the court lacks jurisdiction of the subject matter and of the claim or claims allegedly asserted therein against said defendants and each of them, as appears from the complaint, as amended.

2. For summary judgments in favor of said defendants and each of them, pursuant to Rule 56(b) of the Rules of Civil Procedure for the District Courts of the United States, on the ground that this action was not commenced as against said defendants, or either of them, within the period or periods limited by law for the commencement of an action thereon, all as more fully appears from the summons, the Marshal's returns of the alleged services thereof upon said defendants, the complaint, as amended,

[fol. 161] and the annexed affidavits of said defendants sworn to September 27, 1945.

Dated: October 1, 1945.

LeBoeuf & Lamb, Attorneys for Defendants Fogarty and Freeman, 15 Broad Street, Borough of Manhattan, New York 5, New York.

In United States District Court

Notice of Motion of Defendants Niven, et al.

[Same Title]

Sirs:

Please take notice that on the summons, the amended complaint, the Marshal's return of service or process, all on file herein, and upon the annexed affidavit of Francis J. Clowes, sworn to on the 5th day of October, 1945, the undersigned will move this Court, at a Stated Term for Motions, to be held at the United States Court House, Foley Square, in the Borough of Manhattan, City of New York, on October 16th, 1945, or as soon thereafter as counsel can be heard for the following relief:

1. An order, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for the entry of summary judgment in favor of the defendants, John B. Niven, Henry E. Mendes, Francis J. Clowes, Victor H. Stempf, Edwin H. Wagner, Sr., Robert C. Brown, William C. Bechart and Jacob P. Friedman co-partners doing business as accountants and auditors under the firm name and style of Touche, [fol. 162] Niven & Co., dismissing the complaint as to said defendants, on the ground that the complaint fails to state a claim against the defendants upon which relief can be granted in that the action is barred by the applicable State Statute of Limitations and the said defendants are entitled to a judgment in their favor as a matter of law;

2. An order, pursuant to Rule 12(B) of the Federal Rules of Civil Procedure, for the entry of judgment in favor of the defendants aforesaid, dismissing the complaint on the ground that in the absence of diversity of citizenship the District Court of the United States for

the Southern District of New York lacks jurisdiction over the subject matter herein.

Please take further notice, that answering affidavits hereon shall be served prior to the day of hearing.

Dated, October 5th, 1945.

Yours etc., Hawkins, Delafield & Longfellow, By C. O. Donahue, A Member of the Firm, Attorneys for Defendants; John B. Niven, Henry E. Mendes, Francis J. Clowes, Victor H. Stempf, Edwin H. Wagner, Sr., Robert C. Brown, William C. Bechart and Jacob P. Friedman, Office and Post Office Address, 67 Wall Street, New York 5, N. Y.

To: Austrian & Lance, Esqs., Attorneys for Plaintiffs, Office and Post Office Address, 61 Broadway, Borough of Manhattan, City of New York.

[fol. 163] In United States District Court

[Same Title]

Austrian & Lance, Esqs., Attorneys for Plaintiffs, 61 Broadway, New York City. (Saul J. Lance, Esq., and Isadore H. Cohen, Esq., of Counsel.)

Sullivan & Cromwell, Esqs., and Milton Pollack, Esq., Attorneys for Harrison Williams, Clifford F. Stone, Albert E. Fardee, Clinton M. Finney, Onondaga Corporation, Federal Utilities Corporation, New Empire Corporation, Electric Investment Corporation and Utilities Securities Corporation, 48 Wall Street, New York 5, N. Y. (Milton Pollack, Esq., of Counsel.)

Sullivan & Cromwell, Esqs., Attorneys for Defendants, Howard J. Sachs, Walter E. Sachs, Bowers, Weinberg, Dulles and Catchings, 48 Wall Street, New York 5, N. Y. (E. H. Sykes, Esq., and William Piel, Jr., Esq., of Counsel.)

LeBoeuf & Lamb, Esqs., Attorneys for Defendants, James F. Fogarty and Herbert C. Freeman, 15 Broad Street, New York 5, N. Y. (Horace R. Lamb, Esq., and Craigh Leonard, Esq., of Counsel.)

Hawkins, Delafield & Longfellow, Esqs., Attorneys for John B. Niven, Henry E. Mendes, Francis J. Clowes, Victor H. Stempf, Edwin H. Wagner, Sr., Robert C. Brown, Wil-

liam C. Beckert, Jacob P. Friedman, 67 Wall Street, New York 5, N. Y.

Roger S. Foster, Esq., Solicitor, Arnold R. Ginsburg, Esq., Lawrence M. Greene, Esq., Harold V. Lese, Esq., Attorneys, Securities and Exchange Commission, 18th and Locust Streets, Philadelphia 3, Pennsylvania.

OPINION OF LEIBELL, D. J.

[fol. 164] LEIBELL, D. J.:

In accordance with the direction of the Circuit Court of Appeals, Fourth Circuit, in the *Matter of Central States Electric Corporation*, 143 F. 2d 684, the plaintiffs herein were substituted as trustees of Central States Electric Corporation in the proceeding for the reorganization of that corporation under Chapter X of the Bankruptcy Act. After an investigation, pursuant to Sec. 167 of the Act, these trustees brought this action July 15, 1945, against the officers and directors (past and present) of the corporation, its principal common stockholder, directors of companies which had transactions with the debtor, and others. The complaint alleges that the defendants conspired to waste, destroy, misappropriate and otherwise wrongfully deal with the property and assets of the debtor and that the defendants were guilty of breaches of trust and waste of assets. Plaintiffs as trustees seek an accounting for the assets, losses and profits involved in the alleged wrongful transactions. The plaintiffs on August 20, 1945, amended their complaint to include an allegation of fraudulent concealment of the facts surrounding the transactions that were previously alleged to constitute waste, etc., so that they were not discoverable until after the investigation of November 15, 1944, was ordered. The proceedings under Chapter X of the Bankruptcy Act were commenced in February 1942. The acts complained of occurred in 1922, 1927-1929 and in 1938. The defendants herein have moved, under Rules 12 and 56 of the Federal Rules of Civil Procedure, for dismissal of the complaint on the ground that this Court lacks jurisdiction of the subject matter and for summary judgment on the ground that the applicable statutes of limitations bar the claims.

The jurisdiction of this Court has been questioned by defendants' motions under Rule 12 of the Federal Rules

[fol. 165] of Civil Procedure. In paragraph A-9 of the complaint the plaintiffs invoke the jurisdiction of the Court under the authority of the Constitution (Art. I, Sec. 8, Clause 4), the Act of Congress relating to bankruptcies (U. S. Code Title 11), and the provisions of the Judicial Code [Sec. 24(1), (19)—28 U. S. C. A. §41(1)(19)]. The amount in controversy is alleged to be in excess of $3,000. There is no allegation of diversity of citizenship in the complaint and it is not relied upon to establish jurisdiction in this Court.

The constitutional clause referred to is that which empowers Congress to establish uniform laws on the subject of bankruptcy.

Subdivision 19 of §24 of the Judicial Code provides that the district courts shall have original jurisdiction "of all matters and proceedings in bankruptcy".

28 U. S. C. A. 41(1)(19) states:—

> "Section 41. (Judicial Code, section 24, amended.) Original Jurisdiction. The district courts shall have original jurisdiction as follows:
>
> (1). *United States as plaintiff; civil suits at common law or in equity.* First. Of all suits of a civil nature, at common law or in equity, brought by the United States, or by any officer thereof authorized by law to sue, or between citizens of the same State claiming lands under grants from different States; or, where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000, and (a) arises under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or (b) is between citizens of different States, or (c) is between citizens of a State and foreign States, citizens, or subjects." [See §41 U. S. C. A. T. 28 p. 32.]

[fol. 166] This is not a suit arising under the Constitution or laws of the United States. A federal question is presented only if it appears from the plaintiffs' statement of facts that a construction of a provision of the Constitution or of a federal statute would sustain or defeat plaintiffs' claim. The federal nature of the right to be established, not the source of the authority to establish it is decisive. *Gully* v. *First National Bank*, 299 U. S. 109; *Spencer* v. *Duplan Silk Co.*, 191 U. S. 526. The causes of action herein

are for breach of fiduciary duty and for waste of assets. The trustees appointed in the Chapter X proceedings have merely inherited the claims from the corporate bankrupt. The claims are based on common law rights, state-created rights. This action does not take its initial genesis by virtue of the provisions of the Bankruptcy Act; only the trustees' authority to sue flows from that source. *McBride v. Farrington*, 60 F. Supp. 92, 94 (D. C. Ore. 1945).

This Federal District Court is not granted jurisdiction over the subject matter of this action under any provision of the Bankruptcy Act. Plaintiffs rely upon Section 2(a)(7) of the Act of 1898, as amended, [11 U. S. C. A. 11(a)(7)] which I quote as follows:—

> "Creation of Courts of Bankruptcy and Their Jurisdiction.
>
> a. The courts of the United States hereinbefore defined as courts of bankruptcy are hereby created courts of bankruptcy and are hereby invested, within their respective territorial limits as now established or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this title, in vacation, in chambers, and during their respective terms, as they are now or may be hereafter held, to—
>
> [fol. 167] (7) Cause the estates of bankrupts to be collected, reduced to money and distributed, and determine controversies in relation thereto, except as herein otherwise provided, and determine and liquidate all inchoate or vested interests of the bankrupt's spouse in the property of any estate, whenever under the applicable laws of the State, creditors are empowered to compel such spouse to accept a money satisfaction for such interest;"

The words "except as herein otherwise provided" refer to §23 of the Act, which will be discussed later. (*Baides v. Hawarden Bank*, 178 U. S. 524 at p. 535). Section 2 of the Act of 1898 was derived from Section 1 of the Bankruptcy Act of 1867, which also constituted the several district courts as courts of bankruptcy, with original jurisdiction in their several districts in all matters and proceedings in bankruptcy. It is important to keep in mind the distinc-

tion between the jurisdiction which a district court exercised as a court of bankruptcy over bankruptcy proceedings under Section 1 of the Act of 1867, and the jurisdiction conferred on a district court as such, by Section 2 of the Act of 1867, over plenary suits to which the bankrupt assignee was a party.

Section 2 of the Act of 1867 conferred a jurisdiction on the federal District Courts that was substantially different from the jurisdiction constituted under Section 1 of the Act of 1867, or under Section 2 of the Act of 1898. This is apparent from a reading of the pertinent part of Section 2 of the Act of 1867 which provided:

> "Said circuit courts shall also have concurrent jurisdiction with the district courts of the same District of all suits at law or in equity, which may or shall be brought by the assignee in bankruptcy against any person claiming an adverse interest, or by such person [fol. 168] against such assignee, touching any property or rights of property of said bankrupt transferable to or vested in such assignee." 14 Stat. 518.

By the amendment of 1874 (18 Stat. 178) the words "the same district" were changed to read "any district"; and the words "or owing any debt to such bankrupt" were added next after the words "adverse interest". [The Bankruptcy Act of 1867 was entirely repealed June 7, 1878 (20 Stat. 99), and for the next twenty years until July 1, 1898 (30 Stat. 544) there was no National Bankruptcy Act.]

The jurisdictional provisions of the Act of 1867 (as amended June 22, 1874 [18 Stat. 178]) were analyzed and explained by Mr. Justice Bradley in *Lathrop* v. *Drake*, 91 U. S. 516 (1875). In that case the court held that the jurisdiction conferred on the federal District Courts by Section 2 of the Act of 1867, as amended, was that of "an ordinary court", of suits at law and in equity, to which the bankrupt's assignee was a party, involving property or rights of the bankrupt. The "bankruptcy court" had exclusive jurisdiction over the bankruptcy proceedings themselves, but—

> "the exclusion of other district courts from jurisdiction over these proceedings does not prevent them from exercising jurisdiction in matters growing out of or connected with that identical bankruptcy, so far as it does not trench upon or conflict with the jurisdiction

> of the court in which the case is pending. Proceedings ancillary to and in aid of the proceedings in bankruptcy may be necessary in other districts where the principal court cannot exercise jurisdiction; and it may be necessary for the assignee to institute suits in other districts [fol. 169] for the recovery of assets of the bankrupt. That the courts of such other districts may exercise jurisdiction in such cases would seem to be the necessary result of the general jurisdiction conferred upon them, and is in harmony with the scope and design of the Act. . . . and we concur in the opinion [in *Shearman* v. *Bingham*, 7 Bank. Reg. 419] that the several District Courts have jurisdiction of suits brought by assignees appointed by other district courts in cases of bankruptcy." [*Lathrop* v. *Drake*, at p. 518.]

Thus any federal district court "as an ordinary court" had jurisdiction of a plenary suit at law or in equity, by the assignee in bankruptcy under the provisions of Section 2 of the Act of 1867, as amended, and the jurisdiction if exercised was "the regular jurisdiction between party and party, as described in the Judiciary Act (eleventh section) and the third article of the Constitution". *Morgan* v. *Thornhill*, 78 U. S. 65 at p. 80; quoted in *Bardes* v. *Hawarden Bank* (1900), 178 U. S. 524 at p. 532. The jurisdiction of the District Court under Section 1 of the Act of 1867 which controlled the bankruptcy proceedings themselves was that of a "court of bankruptcy"; it was the "principal court".

The following quotation from the opinion of Mr. Justice Gray in the *Bardes* case (p. 532) further emphasizes the distinction between the jurisdiction conferred by Section 2 as compared with that constituted by Section 1 of the Act of 1867—

> "It was also repeatedly held by this court that the right of an assignee in bankruptcy to assert a title in property transferred by the bankrupt before the bankruptcy to a third person, who now claimed it adversely [fol. 170] to the assignee, could only be enforced by a plenary suit, at law or in equity, under the second section of the act of 1867; and not by summary proceedings under the first section thereof; notwithstanding the declaration in that section that the jurisdiction in bankruptcy should extend 'to the collection of all the

assets of the bankrupt,' and 'to all acts, matters and things to be done under and in virtue of the bankruptcy' until the close of the proceedings in bankruptcy. *Smith* v. *Mason* (1871), 14 Wall. 419; *Marshall* v. *Knox* (1872), 16 Wall. 551, 557; *Eyster* v. *Gaff* (1875), 91 U. S. 521, 525.

The jurisdiction of the courts of the United States over all matters and proceedings in bankruptcy, as distinguished from independent suits at law or in equity, was of course exclusive. But it was well settled that the jurisdiction of such suits, conferred by the second section of the act of 1867 upon the Circuit and District courts of the United States for the benefit of an assignee in bankruptcy, was concurrent with that of the state courts."

[Trustees in bankruptcy under the Act of 1898 "take the place and are vested with the power of assignees in bankruptcy under former bankrupt acts". *Bardes* v. *Hawarden Bank*, 178 U. S. 524, at p. 526.]

As stated by Chief Justice Hughes in *Schumacher* v. *Beeler*, 293 U. S. 367 at p. 372:

"The Act of 1867 recognized and emphatically declared the distinction between proceedings in bankruptcy, properly so-called and independent suits between assignees in bankruptcy and adverse claimants. Jurisdiction in such suits was conferred upon the District Courts and Circuit Courts of the United States by express provision to that effect in Section 2 of that Act [fol. 171] and was not derived from the other provisions of Sections 1 and 2 conferring jurisdiction of proceedings in bankruptcy."

It was with this legislative and judicial background that the Bankruptcy Act of 1898 was enacted. Section 2 of the Act of 1898 is entitled "Creation of Courts of Bankruptcy and their Jurisdiction". It took the place of Section 1 of the Act of 1867 and does not differ substantially from that section, except that it seems to specify in greater detail matters which relate to the proceedings in bankruptcy. The section does not refer to plenary actions at law or suits in equity, by or against the trustee in bankruptcy. *Bardes* v. *Hawarden Bank*, 178 U. S. 524 at p. 534. The Act of

1898 did not include a section with the broad law and equity jurisdictional provisions in independent civil actions by the trustee against adverse claimants, in federal District Courts, such as were contained in Section 2 of the Act of 1867. To provide for a more limited jurisdiction in such cases Congress included in the Act of 1898 Section 23(b) which was entitled "Jurisdiction of United States and State Courts". As originally enacted July 1, 1898, § 23, provided:

> "Sec. 23. Jurisdiction of United States and State Courts.—(a) The United States circuit courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings in bankruptcy, between trustees as such and adverse claimants concerning the property acquired or claimed by the trustees, in the same manner and to the same extent only as though bankruptcy proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants.
>
> [fol. 172] (b) Suits by the trustee shall only be brought or prosecuted in the courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them if proceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant.
>
> (c) The United States circuit courts shall have concurrent jurisdiction with the courts of bankruptcy, within their respective territorial limits, of the offenses enumerated in this Act."

In 1903 subdivision (b) was amended by adding thereto the words "except suits for the recovery of property under section sixty, subdivision b, and section sixty-seven, subdivision e." In 1910 suits under "section seventy, subdivision e" were added to the exception.

In 1926 Section 23 was recast to read as follows:

> "(a) The United States district courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings in bankruptcy, between trustees as such and adverse claimants concerning the property acquired or claimed by the trustees, in the same manner and to the same extent only as

though bankruptcy proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants.

(b) Suits by the trustee shall be brought, or prosecuted only in the courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them if proceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant, except suits for the recovery of [fol. 173] property under section 60, subdivision b; section 67, subdivision e; and section 70, subdivision e."

When the Bankruptcy Act was revised in June, 1938, Section 23 was amended to read as follows:

"(a) The United States district courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings under this Act, between receivers and trustees as such and adverse claimants, concerning the property acquired or claimed by the receivers or trustees, in the same manner and to the same extent as though such proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants.

b. Suits by the receiver and the trustee shall be brought or prosecuted only in the courts where the bankrupt might have brought or prosecuted them if proceedings under this Act had not been instituted, unless by consent of the defendant, except as provided in sections 60, 67 and 70 of this Act."

Section 23 is not a limitation on any old powers of the District Court, but rather a new grant of jurisdiction.

"The Bankrupt Acts of 1867 and 1841, as has been seen, each contained a provision conferring in the clearest terms on the Circuit and District Courts of the United States concurrent jurisdiction of suits at law or in equity between the assignee in bankruptcy and an adverse claimant of property of the bankrupt. We find it impossible to infer that when Congress, in framing the Act of 1898, entirely omitted any similar provision, and substituted the restricted [fol. 174] provisions of section 23, it intended that.

either of those courts should retain the jurisdiction which it had under the obsolete provision of the earlier act." *Bardes* v. *Hawarden, supra*, p. 537.

Further testimony for this theory of a new grant of jurisdiction on condition, is found in the opinion of Chief Justice Hughes in *Schumacher* v. *Beeler*, 293 U. S. 367, 374 (1934):

> "In enacting Section 23 it was clearly the intent of Congress that the federal courts should not have the unrestricted jurisdiction of suits between trustees in bankruptcy and adverse claimants which these courts had exercised under the broad provisions of Section 2 of the Act of 1867. . . . Section 23(b) was thus in effect a grant of jurisdiction subject to that condition."

Plaintiffs argue that since Section 23(b) is not applicable to Chapter X corporate reorganization proceedings (it is expressly excluded therefrom by Section 102) it follows that Section 2a(7) of the Bankruptcy Act, hereinabove referred to, confers jurisdiction on this federal District Court to hear and determine this action for an accounting, a plenary suit in equity brought by the reorganization trustees against those who are charged with waste and misappropriation of the corporation's property.

The exclusion of Section 23(b) from Chapter X reorganization proceedings by Section 102 of the Act does not operate to revive the old law and equity plenary suit jurisdiction of Section 2 of the Act of 1867; nor does it clothe § 2(a)(7) of the Act of 1898 with a meaning and purpose similar to that of § 2 of the Act of 1867. In my opinion it would require something more than the language of § 102 of the Act of 1898 as added June 22, 1938 to accom- [fol. 175] plish so great a change in a jurisdictional provision. United States District Courts are courts of limited jurisdiction, possessing only such powers as Congress confers. *Ex parte Edelstein*, 30 F. 2d 636. *In re Hollins*, 229 F. 349. *In re Prima Co.*, 98 F. 2d 952 at p. 956. Any intent of Congress in 1938 to revive and reconfer a grant of jurisdiction repealed in 1898, should be sought in the language of the statute, and should not be based on a far-fetched inference. Section 2a(7) upon which the plain-

tiffs rely is a grant of extensive powers, but only to the district court which is sitting as the "bankruptcy court" in the proceeding. This seems clear from the language of the 1898 statute, the purposeful omission of Section 2 of the Act of 1867, and the construction given § 23 of the Act of 1898 in *Bardes* v. *Hawarden, supra.*

Chapter X and its predecessor Section 77B specifically provided that the powers and jurisdiction of the "bankruptcy court" should include the powers which a Court of the United States would have in an equity receivership over a debtor's property. This is evident from the provisions of Section 115 of the Act, which followed the language of Section 77B(a) of the former reorganization chapter. Section 115 states:

> "Upon the approval of a petition, the court shall have and may, in addition to the jurisdiction, powers and duties hereinabove and elsewhere in this chapter conferred and imposed upon it, exercise all the powers, not inconsistent with the provisions of this chapter, which a court of the United States would have if it had appointed a receiver in equity of the property of the debtor on the ground of insolvency or inability to meet its debts as they mature."

[fol. 176] In applying that provision of Section 77B the courts held that it was not inconsistent with Section 23—that the grant of equity receivership jurisdiction to the bankruptcy court under Section 77B related to jurisdiction over the debtor's property, wherever located, in proceedings in rem; but that it did not apply to plenary suits growing out of the receivership, suits in personam. *In re Standard Gas & Electric Co.* (3rd C. C. A. 1941), 119 F. 2d 658 at p. 662 and cases there cited. It was intimated in *Tilton v. Model Yari Corp.*, 112 F. 2d 86 at p. 88 that since § 102 of the Act made Sec. 23 inapplicable to proceedings under Chapter X, the District Court (i. e. the reorganization court) would have jurisdiction of a plenary suit by a trustee "even where the defendant did not consent" to jurisdiction. In the case at bar that would mean that the District Court in which the petition for reorganization was filed would have jurisdiction of the subject matter of this action, regardless of the unwillingness of the defendants to consent to its jurisdiction. Whether or not the

reorganization court could obtain jurisdiction of these defendants in personam, is another question discussed in the *Standard Gas & Electric Co.* case at p. 664.

The trustees in the reorganization proceeding under Chapter X, having the same powers as an equity receiver, may sue an adverse claimant in a plenary suit in the reorganization court without proof of diversity or other federal grounds to establish jurisdiction of the action; but if they seek to bring a plenary action against the adverse claimant in a district other than the reorganization district they are obliged to conform to the same jurisdictional requirements that an equity receiver was required to conform to. It seems, therefore, that the only change brought about by Chapter X in this connection is to provide the federal district court, in which the Chapter X proceedings are pending, as an additional forum for [fol. 177] a plenary suit by a reorganization trustee. See *Warder* v. *Brady* (4th C. C. A. 1940), 115 F. 2d 89 at p. 94; *In re Standard Gas & Electric Co.*, 119 F. 2d 658 at p. 662; *Gerdes, Corporate Reorganization*, 52 Harv. Law Rev. 1, 21.

This federal District Court is not the reorganization court of the plaintiff trustees, and as in the case of an equity receiver, they cannot maintain this action as ancillary to the bankruptcy proceedings without showing other grounds of jurisdiction. The trustees are not left without a forum. In addition to the district court of their appointment, (*Tilton* v. *Model Taxi Corp.*, *supra*) other federal district courts, where diversity of citizenship is shown, [28 U. S. C. A. § 41(1)(b)], and the appropriate state courts (*Hastings* v. *Bullesby & Co.*, 286 N. Y. 468) would have jurisdiction over this type of action.

As a matter of policy, there does not seem to be any valid reason why the trustee in a reorganization proceeding should not be permitted to institute in a district court, other than the Court of his appointment, a plenary suit against an adverse claimant, such as these defendants, without a showing of diversity of citizenship as the basis of federal jurisdiction. An amendment to the Bankruptcy Act to confer such jurisdiction may be desirable. However, that rests with the Congress. I have given careful consideration to all the relevant decisions and to the legislative history of the pertinent sections of the Bank-

ruptcy Act, and I am obliged to conclude that this federal District Court does not have jurisdiction of this action.

Having reached that conclusion, I need not discuss the second part of defendants' motions based on the defense of the Statute of Limitations. However, I wish to state that if this Court had jurisdiction of the action in a diversity of citizenship case, I would deny that motion because there are issues of fact that would have to be determined before the Court could decide which provisions [fol. 178] of the Statute of Limitations are applicable, when the various causes of action accrued, and whether the Statute of Limitations was tolled as to any of them. The allegations contained in paragraph A-20-A of the complaint charging the deliberate concealment of the facts in respect to the transactions described in the complaint, and certain other allegations of fact as to domination, control and duress would present those issues. This case should be tried, but this is not the proper forum with the complaint in its present form.

The motions of the defendants to dismiss the complaint for lack of jurisdiction of the action are granted. Settle orders on two days' notice.

Dated May 1st, 1946.

Vincent L. Leibell, United States District Judge.

[fol. 179] In United States District Court

[Same Title]

Order of Dismissal

Motions having been made herein by the defendants named hereafter for judgment pursuant to Rule 12(b) to dismiss this action on the ground that this Court lacks jurisdiction of the subject matter, or in the alternative for an order pursuant to Rule 56 for summary judgment in favor of said defendants on the ground that the transactions complained of are barred by the applicable State Statute of Limitations; said motions having been made by the defendants Harrison Williams, Clifford F. Stone, Albert E. Pardee and Clinton M. Finney, appearing thereon by Sullivan & Cromwell and Milton Pollack, their attorneys; and by the defendants Walter E. Sachs, Henry S. Bowers, Sydney J. Weinberg, John Foster Dulles and

Waddill Catchings, appearing thereon by Sullivan & Cromwell, their attorneys; and by the defendants James F. Fogarty and Herbert C. Freeman, appearing thereon by LeBoeuf & Lamb, their attorneys; and by the defendants John B. Niven, Henry E. Mendes, Francis J. Clowes, Victor H. Stempf, Edwin H. Wagner, Sr., Robert C. Brown, William C. Bechert and Jacob P. Friedman, appearing thereon by their attorneys, Hawkins, Delafield & Longfellow; and the said motions having regularly come on to be heard;

And judgments having heretofore been rendered herein vacating the service of process and dismissing the complaint, as amended, without prejudice and without costs on October 25, 1945 in favor of Howard J. Sachs, and on October 26, 1945, in favor of New Empire Corporation, Electric Investment Corporation, Federal Utilities, Inc., Utilities Securities Corporation, Onondaga Corporation, named herein as defendants, and against the plaintiffs herein;

And the following affidavits having been submitted on the motions based on the Statute of Limitations, viz., the [fol. 180] affidavits of Clifford F. Stone, Clinton M. Finney, Albert E. Pardee, Harrison Williams, Walter E. Sachs, Henry S. Bowers, Sydney J. Weinberg, Waddill Catchings, John Foster Dulles, James F. Fogarty, Herbert C. Freeman and Francis J. Clowes, in support of said motions, and the affidavit of Carl J. Austrian, in opposition thereto;

Now, on reading and filing the notices of said motion, dated October 1, 1945 and October 5, 1945, and on the complaint, as amended, filed herein, and after hearing Milton Pollack, Esq., Horace R. Lamb, Esq., and Barent L. Visscher, Esq., in support of the motions, and Carl J. Austrian, Esq., in opposition thereto, and due deliberation having been had;

And it appearing that the Court lacks jurisdiction of the subject matter of this action, and the Court's opinion thereon having been filed on May 1, 1946;

Now, on motion of said attorneys for the moving defendants, it is hereby

Ordered, that the said motions to dismiss this action pursuant to Rule 12(b) be granted and that this action be dismissed for want of jurisdiction of the subject mat-

ter and that a judgment to that effect shall be entered by the Clerk of this Court.

Dated: May 20, 1946.

Vincent L. Leibell, U. S. D. J.

Consented to as to form: Austrian & Lance. Milton Pollack, Sullivan & Cromwell. Sullivan & Cromwell. LeBoeuf & Lamb. Hawkins, Delafield & Longfellow.

[fol. 181] In United States District Court

[Same Titles]

Judgment of Dismissal for Lack of Jurisdiction Appealed From

Certain defendants having moved to dismiss this suit for want of jurisdiction of the subject matter, and the Court having found that it lacks jurisdiction of the subject matter, and the Court's order thereon having been filed on May 20, 1946, it is

Adjudged and Decreed that this action be and it hereby is dismissed for want of jurisdiction of the subject matter.

Judgment rendered this 22nd day of May, 1946.

William V. Connell, Clerk.

[fol. 182] In United States District Court

[Title omitted]

Notice of Appeal

Notice is hereby given that Carl J. Austrian and Robert G. Butcher, as Trustees of Central States Electric Corporation, plaintiffs above named, hereby appeal to the [fol. 183] Circuit Court of Appeals for the Second Circuit from the final judgment and decree entered in this action on the 22nd day of May, 1946.

Dated: June 19, 1946.

Austrian & Lance, By Carl J. Austrian, Attorneys for Carl J. Austrian and Robert G. Butcher, as Trustees of Central States Electric Corporation, Office & P. O. Address, 61 Broadway, New York, New York.

[fol. 184] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

[Title omitted]

STIPULATION AS TO RECORD

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above entitled matter as agreed upon by the parties.

Dated, New York, September 12th, 1946.

Austrian & Lance, Attorneys for Plaintiffs-Appellants. Milton Pollack and Sullivan & Cromwell, Attorneys for Defendants-Appellees Harrison Williams, Clifford F. Stone, Albert E. Pardee and [fol. 185] Clinton M. Finney. Sullivan & Cromwell, Attorneys for Defendants-Appellees Walter E. Sachs, Henry S. Bowers, Sidney J. Weinberg, John Foster Dulles and Waddill Catchings. LeBoeuf & Lamb, Attorneys for Defendants-Appellees James F. Fogarty and Herbert C. Freeman. Hawkins, Delafield & Longfellow, Attorneys for Defendants-Appellees John B. Niven, Henry E. Mendes, Francis J. Clowes, Victor H. Stempf, Edwin H. Wagner, Sr., Robert C. Brown, William C. Bechart and Jacob P. Friedman. Ralph Jonas, Defendant-Appellee in Person. Louis E. Kilmarx, Defendant-Appellee in Person. Christian A. Johnson, Defendant-Appellee in Person. David H. McCornack, Defendant-Appellee in Person. John H. Eccles, Defendant-Appellee in Person. Cahill, Gordon, Zachry & Reindel, Attorneys for Defendant-Appellee Clarence F. Dillon. Otto A. Philipp, Defendant-Appellee in Person. Hugh B. Baker, Defendant-Appellee in Person.

[fol. 186] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 187] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT—OCTOBER TERM, 1946

No. 81

Argued November 4th, 1946. Decided December 10, 1946.

Docket No. 20348

CARL J. AUSTRIAN and ROBERT G. BUTCHER, as Trustees of Central States Electric Corporation, Plaintiffs-Appellants

v.

HARRISON WILLIAMS, et al., Defendants-Appellees.

Before: SWAN, AUGUSTUS N. HAND and CLARK, *Circuit Judges.*

Appeal from the District Court of the United States for the Southern District of New York.

Action by Carl J. Austrian and Robert G. Butcher, as trustees in reorganization of Central States Electric Corporation, against Harrison Williams and others, stockholders, officers, and directors of, or otherwise associated with, the debtor, for an accounting and other equitable relief for alleged breach of fiduciary duties and waste and misappropriation of the assets of the debtor. From an [fol. 188] order dismissing the action for lack of jurisdiction of the subject matter, D.C.S.D.N.Y., 67 F. Supp. 223, the plaintiffs appeal. Reversed and remanded.

CARL J. AUSTRIAN, of New York City (Austrian & Lance, and Saul J. Lance, George H. Schwartz, and Isadore H. Cohen, all of New York City, on the brief), *for appellants.*

MILTON POLLACK, of New York City (Sullivan & Cromwell, and Emery H. Sykes and William Piel, Jr., all of New York City, on the brief), for appellees Harrison Williams, *et al.* and Walter E. Sachs, *et al.*

HORACE R. LAMB, of New York City (LeBoeuf & Lamb and Craigh Leonard and James O'Malley, Jr., all of New York City, on the brief), *for appellees* James F. Fogarty and Herbert C. Freeman.

HAWKINS, DELAFIELD & LONGFELLOW, of New York City (Lewis L. Delafield, Barent L. Visscher, and Thomas A. Purcell, all of New York City, of counsel), *for appellees* John B. Nevin, *et al.*

ROGER S. FOSTER, Sol., ROBERT S. RUBIN, Asst. Sol., and Arnold R. Ginsburg and Lawrence M. Greene, Attys., all of Philodelphia, Pa., for the Securities and Exchange Commission, *amicus curiae*.

[fol. 189] CLARK, *Circuit Judge*:

Plaintiffs brought this action for the recovery of corporate assets in the Southern District of New York in their capacity of trustees of Central States Electric Corporation, a Virginia corporation now in reorganization in the District Court of the United States for the Eastern District of Virginia. To that court they owe their appointment, as well as authority to proceed against these former stockholders, officers, directors, and others accused of conspiring to defraud the debtor corporation. Except for certain defendants not served and others who have raised the issue of venue, the defendants all appear to be residents of the Southern District of New York. Jurisdiction is rested not upon diversity of citizenship, but upon the provisions of the Bankruptcy Act, hereinafter discussed, and of the Judicial Code, 28 U. S. C. §41(1)(19), referring to suits by an officer of the United States or arising under the Constitution or laws of the United States. On motion of defendants raising the issue, the District Court dismissed the action for want of jurisdiction of the subject matter, writing a well-reasoned opinion, D. C., S. D. N. Y., 67 F. Supp. 223, and plaintiffs have appealed.[1] The issue is of obvious importance in the administration of Chapter X of the Bankruptcy Act, and we have been aided by helpful briefs and arguments of the parties, as well as by a brief *amicus curiae* by the Securities and Exchange Commission urging reversal.

Section 2a of the Bankruptcy Act, 11 U. S. C. A. §11a, gives the district courts jurisdiction at law and in equity

[1] While not all defendants joined in the motion to dismiss, the court did dismiss the entire action, thus avoiding any question of appealability of the order, as in *Porter* v. *American Distilling Co.*, 2 Cir., Nov. 4, 1946.

in "proceedings" under the Act to "cause the estates of [fol. 190] bankrupts to be collected, reduced to money and distributed, and determine controversies in relation thereto," except where otherwise provided in the Act.[2] So broad a grant of power would seem to confer extensive jurisdiction upon the United States courts for the collection of a bankrupt's assets, subject to the usual protective requirements as to service of process within the district and as to venue; and such has been the conclusion of text writers, supported by a holding under the earlier Bankruptcy Act. *Lathrop* v. *Drake*, 91 U. S. 516; 6 Collier on Bankruptcy, 14th Ed., §3.20, p. 672; Gilbert-Collier on Bankruptcy, 4th Ed. 1937, 63; Gerdes, *Corporate Reorganizations—Changes Effected by Chapter X of the Bankruptcy Act*, 52 Harv. L. Rev. 1, 21.

Defendants contend, however, that the word "proceedings" as used throughout the Act denotes only the summary proceedings whereby the court having charge of the

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[2] "§11 [§2]. Creation of courts of bankruptcy and their jurisdiction

"a. The courts of the United States hereinbefore defined as courts of bankruptcy are hereby created courts of bankruptcy and are hereby invested, within their respective territorial limits as now established or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this title, in vacation, in chambers, and during their respective terms, as they are now or may be hereafter held, to—

. . . . . .

"(6) Bring in and substitute additional persons or parties in proceedings under this title when necessary for the complete determination of a matter in controversy;

"(7) Cause the estates of bankrupts to be collected, reduced to money and distributed, and determine controversies in relation thereto, except as herein otherwise provided, and determine and liquidate all inchoate or vested interests of the bankrupt's spouse in the property of any estate, whenever under the applicable laws of the State, creditors are empowered to compel such spouse to accept a money satisfaction for such interest."

debtor's estate administers the property under its control. "Proceedings" does not, under this view, include ordinary civil actions, such as the one at bar, to recover assets held [fol. 191] adversely under a claim of right. Because the grant of jurisdiction in §2a is limited to "proceedings" it would result that all of the numbered subdivisions following thereafter apply only to summary proceedings, and do not govern the case at bar. Under this view, the in personam jurisdiction of the bankruptcy courts springs from §23, 11 U. S. C. A. §46, which gives the district courts "jurisdiction of all controversies at law and in equity, as distinguished from proceedings under this act," between trustees and claimants of property.[3] But this section is expressly made inapplicable to a reorganization proceeding unless an order is entered that bankruptcy be proceeded with. §102, 11 U. S. C. A. §502. The reason for excluding it from Chapter X, say defendants, was that reorganization is concerned not with collecting assets for distribution to creditors, but with administration and continuation of the debtor's business until the plan of reorganization can be put into effect. The jurisdiction of the district courts over ordinary civil suits was irrelevant to this function and was therefore eliminated. Indeed, defendants urge, §101, 11 U. S. C. A. §501, which provides that "the provisions of this chapter [X] shall apply exclusively to proceedings under this chapter," indicates a Congressional purpose to confine the application of Chapter X entirely to the summary, ad- [fol. 192] ministrative proceedings. Defendants find some

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[3] "§46 [§23]. Jurisdiction of controversies between receivers and trustees and adverse claimants

"a. The United States district courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings under this title, between receivers and trustees as such and adverse claimants, concerning the property acquired or claimed by the receivers or trustees, in the same manner and to the same extent as though such proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants."

By §23b, suits can be prosecuted only in courts where the bankrupt could have brought them, unless by consent, and except for actions under §§ 60, 67, 70, as discussed below.

support for this technical view of the word "proceedings" in judicial statements such as those found in *Bardes* v. *Hawarden First Nat. Bank*, 178 U. S. 524, and *Schumacher* v. *Beeler*, 293 U. S. 367. These statements suggest that by an analogy drawn from the language of the Bankruptcy Act of 1867, §2 of the present Act is a grant of summary jurisdiction only.

The two cases apparently derived that conclusion from an interpretation of *Lathrop* v. *Drake*, *supra*, a decision which construed the Act of 1867 and which, it seems now clear, should not be so interpreted. It was there held that the jurisdiction of the district courts over civil suits came from §1 of that Act, which is now substantialy embodied in §2 of the present Act; and that §2 of the 1867 Act, now repealed, which the two former cases regarded as the source of jurisdiction over civil suits, merely conferred a concurrent jurisdiction upon the circuit courts. The former cases, moreover, were decided not under the Act of 1867, but under the Act of 1898; and they were concerned not with a construction of §2, but with the applicability of §23. The statements in them from which defendants claim support are therefore merely dicta, and do not sap the vitality of the jurisdictional holding in the early case. But, going beyond the historical analogies, however construed, we think it clear that on a true reading of the Act the word "proceedings" cannot be thus limited. For it is used elsewhere to describe ordinary civil actions or "plenary" suits, as they are sometimes called. This is true under §11e, 11 U. S. C. A. §29e, which authorizes trustees to "institute proceedings in behalf of the estate upon any claim," and contains also a reference to "any proceeding, judicial or otherwise," *Herget* v. *Central Nat. Bank & Trust Co.*, 324 U. S. 4; and under §§60b, 67e, and 70e(3) of the Act, [fol. 193] 11 U. S. C. A. §§96b, 103e, and 110e(3), each of which confers upon the district courts and upon state courts concurrent jurisdiction over certain "plenary proceedings." *Herget* v. *Central Nat. Bank & Trust Co.*, *supra*; *Schoenthal* v. *Irving Trust Co.*, 287 U. S. 92; *Taubel-Scott-Kitzmiller Co.* v. *Fox*, 264 U. S. 426; *Bardes* v. *Hawarden First Nat. Bank*, *supra*; *Morrison* v. *Bay Parkway Nat. Bank*, 2 Cir., 60 F. 2d 41, certiorari dismissed *Lafayette Nat. Bank* v. *Morrison*, 296 U. S. 669; *Milkman* v. *Arthur*, 2 Cir., 223 F. 507; *Lowenstein* v. *Reikes*, 2 Cir., 54 F. 2d 481, cer-

tiorari denied 285 U. S. 539; *Coffey* v. *Managed Properties*, 2 Cir., 85 F. 2d 88. Moreover, the "except" clause in §2a(7) refers to §23, *Bardes* v. *Hawarden First Nat. Bank*, *supra*; *Bryan* v. *Bernheimer*, 181 U. S. 188, 191, a section in which the word "proceedings" is used, and which deals solely with the jurisdiction of the federal courts to entertain ordinary civil actions. *Thompson* v. *Terminal Shares*, 8 Cir., 104 F. 2d 1, 9, certiorari denied 308 U. S. 559. Obviously a section which deals with jurisdiction over civil actions can be an exception to another section only if that other section also deals with jurisdiction over civil suits. The jurisdiction granted by §§ 2a, 2a(6), and 2a(7) may be exercised by all the district courts, and not solely by the one in which the bankruptcy or reorganization petition was originally filed. Bankruptcy Act, §2a(20); *Babbitt* v. *Dutcher*, 216 U. S. 102; *Collett* v. *Adams*, 249 U. S. 545; *Mar-Tex Realization Corp.* v. *Wolfson*, 2 Cir., 145 F. 2d 360; *Lathrop* v. *Drake*, *supra*.[4]

We turn now to a consideration of §23, from which both parties assert they derive support. As construed together [fol. 194] with §2a(7), this section determines the jurisdiction of the district courts over civil actions brought by bankruptcy trustees appointed to liquidate estates under Chapters I to VII. In such ordinary bankruptcy proceedings a trustee can bring suit against an adverse claimant in a district court only if the defendant consents to the suit or if the bankrupt himself could have brought the suit had the bankruptcy petition not been filed. *Bardes* v. *Hawarden First Nat. Bank*, *supra*; *Schumacher* v. *Beeler*, *supra*; *Gins* v. *Mauser Plumbing Supply Co.*, 2 Cir., 148 F. 2d 974. If jurisdiction is claimed on the ground of diversity of citizenship, for example, the citizenship of the bankrupt, and not the citizenship of the trustee, is decisive. *Stiefel* v. *14th St. & Broadway Realty Corp.*, 2 Cir., 48 F. 2d 1041. The same result obtained in reorganizations conducted

[4] Similarly, defendants' contention that Chapter X embraces only administrative proceedings in rem is not well taken. Under such a view, § 102 would be rendered meaningless, as purporting to prevent a section dealing solely with jurisdiction in personam from affecting proceedings in rem.

under the old §77B, 11 U. S. C. A. §207 (b), to which the section remained applicable. *In re Standard Gas & Electric Co.*, 3 Cir., 119 F. 2d 658; 2 Gerdes on Corporate Reorganizations, 1936, §906, p. 1470. In some cases to which both §§2a (7) and 23 were applicable, courts have characterized one or the other of them as a grant of jurisdiction or as a limitation on jurisdiction. In *Whitney* v. *Wenman*, 198 U. S. 539, the latter section was characterized as a limitation; in *Schumacher* v. *Beeler, supra*, a later case, it was characterized as a grant. Such characterizations of §23 alone did not control these decisions, since they were based on a construction of the two sections standing together. Here, where that section is not involved, the characterizations of it are not in point; unless Congress has indicated an intention to the contrary, §2a(7), standing alone, must be construed in accordance with its plain wording.

Chapter X was enacted largely because of the many abuses which developed in reorganizations under §77B. One of these was the retention of control over the debtor [fol. 195] corporation during reorganization by "insiders" who frequently sought to conceal and to prevent rigorous prosecution of possible causes of action against the debtor's former management. Report on Protective and Reorganization Committees, Pt. 1, S. E. C., 1937, 865; N. Y. Leg. Doc. No. 66, 159th Sess., 1936, 22; Note, 50 Yale L. J. 1492, 1496. To combat this and other abuses the draftsmen of Chapter X strengthened the hand of the reorganization trustee by giving him access to lists of the debtor's security holders, in whosoever hands they may be, §165, 11 U. S. C. A. §565, by placing upon him the duty of formulating the plan of reorganization, §169, 11 U. S. C. A. §569, and perhaps most important, by giving him broad powers of scrutiny of the conduct of the debtor's business by the debtor's former management, §167, 11 U. S. C. A. §567. In view of the Congressional purpose demonstrated by these provisions, it seems clear that, in eliminating §23 from corporate reorganizations under Chapter X, Congress intended to enlarge, rather than restrict, the trustee's choice of forum in prosecuting causes of action against former controllers of the debtor. This is the view of Professor

Moore and of Mr. Gerdes.* 6 Collier on Bankruptcy, 14th Ed., ¶3.20 (containing specific criticisms of the opinion of the district court); 2 *id.*, ¶2.12; Moore's Bankruptcy Manual, 1939, 494; Gerdes, *Corporate Reorganizations—Changes Effected by Chapter X of the Bankruptcy Act*, 52 Harv. L. Rev. 1, 21.

Since jurisdiction results from the provisions of the Bankruptcy Act, we need not discuss the claim of jurisdiction based on the Judicial Code.

—Reversed and remanded.

[fol. 196] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 10th day of December one thousand nine hundred and forty-six.

Present: Hon. Thomas W. Swan, Hon. Augustus N. Hand, Hon. Charles E. Clark, Circuit Judges.

CARL J. AUSTRIAN & ROBERT G. BUTCHER, as Trustees, etc., Plaintiffs-Appellants,

v.

HARRISON WILLIAMS, et al., Defendants-Appellees

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is reversed with costs, and cause

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* Mr. Gerdes seems to have been influential in urging the amendment eliminating this section from Chapter X. See Hearings before a Sub-committee of the Committee on the Judiciary, U. S. Senate, on H. R. 8046, 75th Cong., 2d Sess., 76, 77.

remanded for further proceedings in accordance with the opinion of this court.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Alexander M. Bell, Clerk.

[fol. 197] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Carl J. Austrian & Robert G. Butcher, etc. v. Harrison Williams, et al., 81 Judgment. United States Circuit Court of Appeals, Second Circuit. Filed December 10th, 1946. Alexander M. Bell, Clerk.

[fol. 198] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 196] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 850

ORDER ALLOWING CERTIORARI—Filed February 10, 1947

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.